

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 J. MARK LANE, et al.,
5 Plaintiffs,
6 Civil Action No:
7 - against - 7:11-cv-10989-KMK

8 MIRIAME E. ROCAH, in her capacity as District
9 Attorney for the County of Westchester, New York
10 and STEVEN G. JAMES, in his official capacity as
11 Acting Superintendent of the New York State Police,
12 Defendants.

13 -----X
14 28 Liberty Street
15 New York, New York

16 May 1, 2024
17 2:01 p.m.

18
19 DEPOSITION OF JAMES TIPPER SEARS, a Plaintiff,
20
21 pursuant to Notice, taken at the above place, date
22
23 and time, before MARIA ACOCELLA, a Notary Public
24
25 within and for the State of New York.

A P P E A R A N C E S:

FLUET

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JAMES THOMPSON, ESQ.

1 J. Sears

2 J A M E S T I P P E R S E A R S, a
3 Plaintiff herein, having been first duly
4 sworn by a Notary Public within and for the
5 State of New York, was examined and
6 testified as follows:

7 EXAMINATION BY

8 MR. THOMPSON:

9 Q. Will you state your name and
10 address for the record, please.

11 A. James Tipper Sears, [REDACTED]
12 [REDACTED] Dobbs Ferry,
13 New York [REDACTED]

14 Q. Thank you very much, Mr. Sears,
15 for coming.

16 My name is James Thompson. I am
17 an attorney here at the Office of the
18 Attorney General, and I represent Steven
19 James, the Superintendent of the State Police
20 in this litigation.

21 Thank you very much for coming
22 down and speaking with us today.

23 So do you understand that you are
24 under oath?

25 A. Yes.

1 J. Sears

2 Q. And do you understand that means
3 you need to give truthful answers to each
4 question that I ask?

5 A. Yes.

6 Q. Is there any reason why you
7 couldn't testify truthfully today?

8 A. No.

9 Q. Do you have any reservation about
10 doing so?

11 A. No.

12 Q. So can I ask, who have you
13 discussed your testimony here today with?

14 A. My legal team.

15 Q. Anyone outside your legal team?

16 A. No.

17 Q. And have you reviewed any
18 documents in connection with your testimony
19 today?

20 A. Only the items that we filed thus
21 far.

22 Q. And could you specify which
23 specific items?

24 A. The initial complaint that was
25 filed, the responses that we gave for the

1 J. Sears

2 documents you are looking for. I forget the
3 name of that legal document.

4 Q. Do you remember, does that
5 include the interrogatories?

6 A. Yes.

7 Q. Does that include any of the
8 briefing on the motion to dismiss?

9 A. Yes.

10 Q. Does that include your
11 declaration in connection with the motion to
12 dismiss?

13 A. It does.

14 Q. Any other documents on top of
15 those, that you can think of?

16 A. That is it.

17 Q. Mr. Sears, can you tell me a
18 little bit about your background?

19 Where did you grow up?

20 A. Sure. Grew up in Westchester,
21 New York. Went to college in Connecticut and
22 came back to Westchester after. Worked in
23 the city for a few years.

24 And I have been back in
25 Westchester for probably the last seven or

1 J. Sears

2 eight years, professionally and residing.

3 Q. Let me figure out how to go
4 through that.

5 So why don't we start with
6 education.

7 You said you went to college in
8 Connecticut.

9 Where did you go?

10 A. Trinity College, in Hartford.

11 Q. And when did you attend?

12 A. From 2009 to 2013.

13 Q. Did you have a major or field of
14 study?

15 A. I was a history major and Italian
16 studies minor.

17 Q. Is that the highest level of
18 education that you have completed?

19 A. Yes.

20 Q. Where did you go high school?

21 A. I went to Irvington High School
22 in Westchester.

23 Q. Have you taken any other courses
24 or certificates any other education outside
25 of those two schools?

1 J. Sears

2 A. Sure. I am in the process of
3 obtaining my CFP, so I am -- I mean, that
4 course work essentially equates to half of a
5 graduate degree in finance through the Boston
6 Institute of Finance and Bryant University.

7 Bryant University, they partner
8 somehow with, I believe it is the Boston
9 Institute of Finance, to administer that
10 course work.

11 Q. Just for my information, CFP?

12 A. Certified Financial Professional
13 designation.

14 Q. What does the CFP allow you to
15 do?

16 A. Act as a fiduciary in dealing
17 with my clients.

18 I am a financial advisor, so
19 outside of the scope, legally, where we
20 aren't required to act as a fiduciary for
21 clients.

22 If you obtain the CFP
23 designation, you are required to act as a
24 fiduciary, advanced training and course work,
25 estate planning, tax needs, cost benefit

1 J. Sears

2 analysis, really everything to build a
3 financial plan, you know, to clients in that
4 regard.

5 Q. Is there a specific career path
6 that you are gearing towards with getting
7 that CFP?

8 A. I am currently a financial
9 advisor.

10 I work with my mother. We have
11 our own franchise, our own financial planning
12 business, so I am essentially in the career
13 that I will likely retire in.

14 Q. Got it.

15 So what is your current
16 employment?

17 A. A financial advisor and chief
18 operating officer for Sears Advisory Group.

19 Q. Is that the firm that you have
20 with your mother?

21 A. Yes.

22 Q. And you said it is a franchise.
23 Is it a franchise of a larger
24 entity?

25 A. Via Ameriprise.

1 J. Sears

2 Q. How long have you worked with
3 Cedars [sic]?

4 A. With?

5 Q. With Cedars [sic] Advisory?

6 A. Sears, my last name.

7 Q. Sears. Oh, I am sorry.

8 That makes a lot more sense.

9 A. I believe we are coming on three
10 years.

11 I think our start date -- I would
12 have to look at my LinkedIn. Either 2000 or
13 2001 we started -- left our previous firms to
14 start up together.

15 Q. And what kind of business
16 organization is it? Is it an LLP, LLC, or
17 something else?

18 A. We are set up as an LLC.

19 Q. And so are you and your mother
20 the two members of the LLC?

21 A. I am not a member. She runs it
22 solely in her name.

23 I am the, I guess you say
24 secondary member, I believe, the way it is
25 set up.

1 J. Sears

2 Essentially, if something were to
3 happen to her, you know, I would have the
4 first right to purchase the franchise from
5 her.

6 I currently have a five percent
7 equity stake in the business, but she is
8 essentially a sole proprietor in the eyes of
9 Ameriprise.

10 So I am paid a salary and
11 commissions through her, salary through her,
12 commissions through Ameriprise.

13 Q. Had she been doing this prior to
14 you joining the firm three years ago?

15 A. She was at a different --

16 She had a franchise of Edward
17 Jones in the same town that I grew up in,
18 that they live in, that our current office
19 there is in.

20 So she left there, was working
21 for a different practice of Ameriprise, based
22 out of Connecticut, previously.

23 Q. Got it.

24 And so in your words, what is it
25 that you do for your clients?

1 J. Sears

2 A. We help folks -- help, you know,
3 their financial goals, make it a reality, put
4 a plan in place.

5 Everything from investment
6 management on a brokerage account or a 401K
7 through complex financial planning, working
8 with third-parties like their CPA's, their
9 attorneys, to put together an estate plan for
10 them, you know; and really, everything in
11 between that, so investment management and
12 financial planning.

13 Q. And prior to joining the Sears
14 LLC three years ago, what did you do?

15 A. I was a financial advisor for a
16 firm called R. Miller & Associates. It was a
17 different franchise, also through Ameriprise.

18 Q. And was it essentially the same
19 work?

20 A. Same work.

21 Q. And prior to that?

22 A. I was the financial advisor for a
23 brokerage firm called Cuso Financial
24 Services.

25 I was the financial advisor that

1 J. Sears

2 oversaw the branch relationships for seven or
3 eight branches in New York, New Jersey and
4 Connecticut.

5 Q. And prior to that?

6 A. Financial advisor with Edward
7 Jones.

8 Q. Prior to that?

9 A. I was a recruiter for a company
10 call Michael Paige, in the city that
11 specialized in hedge funds and private equity
12 clients.

13 Q. Was that your first job out of
14 college, or was there one before that?

15 A. One before that.

16 I was a residential real estate
17 broker for two years.

18 Q. And was that your first job?

19 A. That was my post collegiate job,
20 yes.

21 Q. And, Mr. Sears, have you ever
22 served in the military?

23 A. No.

24 Q. I am going to ask you a couple of
25 questions, and I will warn you, they are

1 J. Sears

2 slightly awkward.

3 Have you ever been arrested?

4 A. No.

5 Q. To your knowledge, have you ever
6 been investigated by law enforcement?

7 A. No.

8 Q. Have you ever been charged with a
9 crime?

10 A. No.

11 Q. Have you ever been convicted of a
12 crime, including misdemeanor or violations?

13 A. No.

14 Q. Have you ever had the police
15 called?

16 A. No.

17 Q. Have you ever called the police?

18 A. No.

19 Q. Have you ever been subject to a
20 restraining order, or anything similar to
21 that?

22 A. No.

23 Q. Do you drink alcohol?

24 A. Yes.

25 Q. About how often?

1 J. Sears

2 A. Socially, a couple of times a
3 month.

4 Q. And how many drinks per time?

5 A. Depends on the event; one to
6 three.

7 Q. Do you use any illegal drugs?

8 A. No.

9 Q. Have you ever been treated for
10 mental illness?

11 A. No.

12 Q. Have you ever been treated at a
13 mental health or substance abuse facility?

14 A. No.

15 Q. Have you ever had driver's or
16 other licenses suspended or revoked?

17 A. No.

18 Q. Have you ever been subject to any
19 professional discipline in your field?

20 A. No.

21 Q. Have you ever applied for a
22 federal firearms license?

23 A. No.

24 Q. Have you ever applied for a
25 New York State gunsmith license?

1 J. Sears

2 A. No.

3 Q. Have you ever been a plaintiff in
4 any other lawsuit besides this one?

5 A. No.

6 Q. Have you ever been a defendant in
7 any other lawsuit?

8 A. No.

9 Q. Have you ever been a party in any
10 criminal case, or administrative or other
11 legal proceeding?

12 A. No.

13 Q. Have you ever provided testimony
14 under oath before?

15 A. No.

16 Q. Ever been deposed before?

17 A. No.

18 Q. So, Mr. Sears, do you own any
19 firearms?

20 A. I do.

21 Q. And which firearms?

22 MR. ROTSKO: If I may, for
23 clarification, are we using firearms
24 under the statute penal law, or a
25 broader definition of guns?

1 J. Sears

2 MR. THOMPSON: I would say under
3 the broader definition of guns; any
4 weapon used to expel a projectile by
5 means of an explosive.

6 Q. Do you own any, sir?

7 A. I do.

8 Q. Can you tell me what kinds?

9 A. I have pistols, shotguns and
10 rifles.

11 Q. How many?

12 A. Over 20.

13 Q. Over 20 of each, or over 20?

14 A. Over 20, total.

15 Q. About how many pistols?

16 A. Around ten.

17 Q. How many shotguns?

18 A. Three or four.

19 Q. And how many rifles?

20 A. Fifteen or so.

21 Q. So can you describe -- which of
22 the pistols do you use the most?

23 A. My SIG Sauer P-320, which is my
24 primary competition shooting pistol.

25 Q. Do you shoot competitively?

1 J. Sears

2 A. I do.

3 Q. In what kind of league?

4 A. Mostly USPSA, United States
5 Practical Shooting Association.

6 And then I shoot with a variety
7 of different clubs in non-nationally, you
8 know, organized matches.

9 Q. And I don't know how to ask this
10 question any better.

11 How good are you? How highly
12 rated are you?

13 A. I am pretty good. I got my
14 pistol permit from Westchester probably right
15 around a year ago last year, so I am doing
16 very well for shooting pistols for a year.

17 There is a class system with
18 USPSA. I have a match this coming weekend
19 where hopefully I will be rated in like A
20 class, you know, A, B, C, D, with master
21 class above it.

22 Q. Let's take a step back.

23 You applied for a Westchester
24 County pistol permit?

25 A. Yes.

1 J. Sears

2 Q. Can you walk me through how that
3 process went?

4 A. I tried a number of years ago to
5 obtain one. I called the clerk's office, you
6 know, when I decided to look at the
7 application, figured out what it entailed
8 and, called.

9 And they told me that they were
10 full up on appointments to apply for a pistol
11 permit, and to try back in the January of the
12 following year.

13 Things came up. You know, I was
14 playing other sports in other leagues. It
15 wasn't that high on the priority list.

16 A couple of years lapsed, same
17 thing.

18 I got the whim probably in 2018,
19 '19. Probably 2018, called again, was told
20 the same thing, call back in January. And I
21 believe it was 2021, you know, I called them.

22 I finally called them, and I
23 actually got an appointment in January. They
24 set it for, you know, November of that year.

25 So I called in January. They

1 J. Sears

2 told me my meeting is 11 months later.

3 I went with my application,
4 submitted it, got fingerprinted. They sat on
5 it for six months.

6 And then I get a letter from the
7 judge saying I was approved, and have to go
8 meet with -- I forget her name, but one of
9 the judges, to essentially grant my pistol
10 permit.

11 Q. So there was a meeting or
12 interview with a judge?

13 A. Yes.

14 Q. Do you remember which judge?

15 A. Susan --

16 Q. Cacaais (phonetic)?

17 A. That sounds right. But I am not
18 positive, but sounds right.

19 Q. And what do you use your pistol
20 for?

21 A. Competition shooting, primarily,
22 and personal defense, home defense, as well.

23 Q. Do you generally carry it with
24 you in public?

25 A. I do, you know, in places that I

1 J. Sears

2 am allowed to.

3 Q. How do you decide when to carry
4 and when not to carry?

5 A. If I am legally allowed to carry
6 it somewhere, I will carry it.

7 Q. Do you carry to it work?

8 A. Yes.

9 Q. I hesitate to ask: Did you carry
10 it here today?

11 A. Of course not.

12 Q. And so your shotguns, what do you
13 use your shotguns for?

14 A. Various types of target shooting.
15 Competition for that, as well as trap, skeet
16 and sporting clays, and some shotgun matches
17 that are similar in format to the pistol
18 matches, where it is, you know, shooting
19 steel from a variety of distances, you know,
20 behind targets and such.

21 Q. And same question -- or actually,
22 what make and model of shotgun do you use the
23 most?

24 A. Mossberg 5-90 pump action
25 shotgun.

1 J. Sears

2 Q. What about that makes it
3 particularly well suited for you?

4 A. It is the most reliable, in the
5 sense that the pump action shotgun, I think
6 has the least -- it is the least prone to
7 failure.

8 Q. So same question for rifles.
9 And you said -- correct me if I
10 am wrong -- you said you have about 15 of
11 them; is that right?

12 A. Yeah, roughly.

13 Q. What do you use your rifles for?

14 A. Competition shooting, target
15 shooting, rifle matches, home defense.

16 Q. And what variety of make and
17 model rifle would you say you use the most?

18 A. Probably an M&P 15 sport.

19 Q. And can you describe the
20 characteristics of that rifle for me?

21 A. Sure. It was the first New York
22 compliant AR pattern rifle that I got, in the
23 sense that it does not have any of the banned
24 features under the Safe Act, so it is able to
25 accept a detachable magazine.

1 J. Sears

2 Q. So is it correct to say, this is
3 a semiautomatic rifle with a detachable
4 magazine, but none of the other features that
5 have been enumerated in the statute?

6 A. Correct.

7 Q. When you say AR compatible, what
8 does that mean?

9 A. The ArmaLite pattern rifle was
10 created by Eugene Stoner in 1956. It is a
11 simplistic semiautomatic rifle platform that
12 has a wide variety of aftermarket support,
13 commonly have used common parts compatible
14 across different manufacturer types, so it is
15 easy to kind of customized barrel length,
16 hand guards things like that that are
17 permitted under New York State law.

18 Q. So what is the difference
19 between -- I apologize.

20 What is the name of the make and
21 model that you use?

22 A. M&P Sport 15.

23 Q. What is the difference between an
24 M&P Sport 15 and what is commonly known as an
25 AR-15?

1 J. Sears

2 A. The version I have, or M&P --
3 like an M&P Sport 15, in general?

4 Q. The version you have?

5 A. The version I have is the
6 New York compliant, and I guess therefore
7 California compliant model, you know, that
8 they made in response to New York and
9 California laws.

10 There are no threads on the
11 barrel to accept a muzzle device. It does
12 not have a pistol grip. It has either --
13 through New York State law, I can have either
14 a fin grip, that doesn't let me wrap my thumb
15 around the stock, or it can have a spur grip,
16 which doesn't protrude conspicuously below
17 the action of the gun, and it is a fixed
18 stock.

19 Whereas, you know, any other
20 rifle, the stock can telescope on the buffer
21 tube to customize adjustability, depending on
22 the user's size.

23 There is a pistol grip for, I
24 think, essentially better safety and
25 deploying the safety on the gun.

1 J. Sears

2 And it would accept threads, and
3 it could also support a forward hand grip.

4 Q. And so what kind of grip or stock
5 does your rifle have?

6 A. My rifle has a fin grip.

7 Q. And do you use that rifle for
8 home defense or self defense?

9 A. I do.

10 Q. And of the rifles that you own,
11 would you say that that is the rifle that you
12 use for self defense?

13 A. It is.

14 Q. I am trying to get a sense of,
15 you know, there is the term AR-15, as it is
16 understood.

17 A. Sure.

18 Q. I know it refers to a class of
19 rifle.

20 And is the rifle that you have, a
21 version of that?

22 A. Yes.

23 Q. Let's see. Have you ever used
24 any of these firearms personally, in self
25 defense --

1 J. Sears

2 A. No.

3 Q. -- or defense of others?

4 A. No.

5 Q. And have you ever been in a
6 situation where you need to use a gun in
7 defense of yourself or others?

8 A. No.

9 Q. Do you anticipate being in a
10 situation where you need to use a gun in
11 defense of yourself or others?

12 A. I hope not.

13 Q. I hope not, too.

14 So there is no particular threat
15 or situation where you are exposed to threats
16 that you are thinking of when you want to
17 have a gun; is that correct?

18 A. Not above and beyond any other
19 person, no.

20 Q. You said you applied for a
21 Westchester County pistol permit.

22 Did you also apply for a
23 Westchester County semiautomatic rifle
24 permit?

25 A. When I initially called to make

1 J. Sears

2 my appointment, the semiautomatic rifle
3 permit wasn't a thing yet.

4 Between when I scheduled my
5 appointment and I submitted paperwork, I
6 believe two months prior, the Bruen case
7 results came out. New York State passed the
8 concealed carry improvement act.

9 And the gun instructors that I am
10 friendly with, everyone was scrambling to
11 figure out what the prerequisites were going
12 to be for the change in the handgun issuance,
13 and what else needed to be done,
14 application-wise, for the semiautomatic rifle
15 permit.

16 At that point, the application
17 had changed slightly, so when I did go to
18 submit, I did submit for a semiautomatic
19 rifle permit, as well, on the same
20 application.

21 Q. Was that application approved?

22 A. Yes.

23 Q. Was it the same process as for
24 the pistol, or a separate process?

25 A. It was the same process, except

1 J. Sears

2 for a couple of additional boxes to check.

3 Q. And was there an interview?

4 A. I believe it was one in the same,
5 with the pistol application.

6 Q. And are your Westchester County
7 pistol and semiautomatic licenses currently
8 active?

9 A. Yes.

10 Q. Do you hold any other
11 firearms-related licenses?

12 A. I have licenses to conceal,
13 carry, in Utah and Pennsylvania.

14 Q. And can you tell me, when did
15 you --

16 Start with the Utah license.

17 When did you seek the Utah
18 license?

19 A. Prior to the approval of my
20 New York license, the organization that did
21 my New York required an 18-hour pistol
22 course, also offered a Utah class so, you
23 know, it basically knocked out both of the
24 requirements at once.

25 Q. So when was this, approximately?

1 J. Sears

2 A. It would have been probably
3 September or October of the year in which I
4 filed for my Westchester license.

5 Q. Was that 2020, 2021?

6 A. I believe it was 2022.

7 Q. So why get a Utah license?

8 A. Because New York State doesn't
9 honor reciprocity with other states,
10 concealed carry licenses.

11 You know, no one from outside
12 New York can come and carry a gun here.

13 States that require some type of
14 permit to carry that aren't constitutional
15 carry states don't honor New York's license.

16 So by having a nonresident
17 New York license, certain states will grant
18 me reciprocity. If I were to go on vacation,
19 or travel for work, I would be able to carry
20 my gun in that state under my Utah license.

21 Q. And what are the requirements to
22 get a Utah license?

23 A. A classroom portion on gun
24 safety, handling, storage, education
25 generally on laws nationally, when self

1 J. Sears

2 defense is warranted or justified, and
3 filling out an application, submitting to a
4 background check.

5 Q. And about how long -- how many
6 hours is the class?

7 A. I think it was six to eight.

8 Q. And did that overlap with the
9 class that you took in New York?

10 A. It was separate.

11 So essentially, with the
12 concealed carry improvement act coming into
13 effect, and the short timeline I had with the
14 passing of that, and my November application,
15 submit my application, the organization I
16 found that would get me an 18-hour New York
17 class in time, they were only accepting
18 students who had taken the Utah or a
19 different class with them.

20 So I essentially had to take the
21 Utah class to be eligible to take the
22 New York class with them. So it was a
23 different curriculum, but it gained me
24 eligibility in the eyes of that organization
25 to sit for that New York class.

1 J. Sears

2 Q. And what was the organization
3 that you took the New York State --

4 A. I believe it is Westchester
5 Firearms Safety.

6 Q. And you mentioned a Pennsylvania
7 license; is that right?

8 A. Yes.

9 Q. When did you get that?

10 A. I can tell you when it was
11 issued. I have it in my wallet, if you would
12 like me to give you a date.

13 But it was probably sometime in
14 2023, in the spring.

15 Q. And so why did you seek a
16 Pennsylvania license?

17 A. It is nearby. Every now and
18 then, you drive through, you know,
19 Pennsylvania to -- you know, to get
20 somewhere.

21 I intend to compete in different
22 pistol and rifle shooting competitions, so it
23 made sense for me.

24 Q. Would your New York or Utah
25 license entitle you to do that in

1 J. Sears

2 Pennsylvania?

3 A. To my understanding -- I am
4 honestly not sure. I didn't look that
5 closely at the reciprocity laws.

6 Q. What was involved in getting the
7 Pennsylvania license?

8 A. Submitting a consent to
9 background check on myself, an application
10 online.

11 I am not sure if I had to
12 upload -- I don't know if I had to upload any
13 of the safety courses I had taken, and go to
14 meet with someone at the county sheriff's
15 office to obtain the license.

16 Q. Other than the types of training
17 that you described in connection with the two
18 New York State licenses, the Utah and
19 Pennsylvania licenses, have you had any
20 specific firearms training, or gone through
21 any specific firearms courses?

22 A. Yes.

23 Q. What?

24 A. I have trained with a couple of
25 different organizations and a variety of a

1 J. Sears

2 different classes; you know, different
3 shotgun specific classes, rifle-specific
4 classes, pistol, both defensive and
5 competition-oriented classes.

6 Q. Can I ask which organizations?

7 A. Predominantly Onsite Firearms
8 Training, and then as well, Westchester
9 Firearms Safety, which is the company who did
10 my New York State and Utah training.

11 Q. Got it.

12 And I apologize if you already
13 mentioned this:

14 Was this in connection with your
15 competitive shooting, or regarding self
16 defense, more generally?

17 A. A little bit of both.

18 You know, depending on the
19 classes offered, and my schedule, you know, I
20 think it is important to be proficient, if I
21 am to own these weapons.

22 Q. All right. Let me take a
23 slightly different tact.

24 So why did you bring this
25 lawsuit, Mr. Sears?

1 J. Sears

2 A. I would like to be able to own,
3 and I should be able to own, rifles that are
4 in common use in other parts of the country,
5 that have the ability to accept a detachable
6 magazine, and have features.

7 Q. When you say in common use, what
8 do you mean by that?

9 A. The tens of millions of other AR
10 weapons that are use in other states by
11 Americans.

12 Q. And what does it mean to be in
13 common use?

14 A. Owned, competed with, used for
15 self defense; you know, possessed for sale.

16 Q. And what is the basis of your
17 belief that assault weapons, as they are
18 defined in New York Law, are in common use?

19 A. If you stop in any gun shop, you
20 go to any shooting range in America, you
21 gonna see AR rifles. They are out there.
22 People have them in their homes.

23 I believe the survey that we
24 submitted in our initial complaint references
25 the sheer number of AR's in common use by

1 J. Sears

2 Americans.

3 Q. And which survey is this?

4 A. The names listed in the
5 complaint.

6 I am not positive, off the top of
7 my head.

8 Q. Where did you find this survey?

9 A. I had come across it in the past,
10 prior to the filing this application, or this
11 suit.

12 Q. So how did you decide to sue?
13 Can you walk me through how you went from
14 being a competitive shooter to being a
15 plaintiff in a federal lawsuit?

16 A. Sure. I had come across the
17 Firearms Policy Coalition at some point in
18 the gun world, you know, shooting long guns,
19 prior to handgun ownership.

20 I liked the type of work that
21 they did. I donated to them in the past.

22 At some point I came across some
23 type of post from them that was looking for
24 folks in New York who were in good legal
25 standing, who had essentially owned AR style

1 J. Sears

2 rifles, that would be interested in being a
3 part of a lawsuit to change and challenge the
4 Safe Act.

5 Q. When was this?

6 A. Sometime probably in the six to
7 nine months prior to us bringing the suit.

8 Q. And so summer/fall of 2022?

9 A. I would imagine.

10 Q. And what was this post on? Was
11 this on social media?

12 A. It was probably on Facebook.

13 Q. And so they were looking for
14 plaintiffs?

15 A. They were looking for plaintiffs.
16 I submitted my information, you
17 know, phone number, name, e-mail.

18 Q. And how did you -- so did the
19 Firearms Policy Coalition contact you back?

20 MR. ROTSKO: Objection.

21 I am going to object to
22 attorney-client privileged
23 communications after Mr. Sears formed
24 the client relationship with the
25 Firearms Policy Coalition.

1 J. Sears

2 Go ahead.

3 MR. THOMPSON: No, no. Let me
4 try and rephrase the question.

5 Q. So you are represented by
6 Mr. Kraut from the Firearms Policy Coalition,
7 is that right, or is it Mr. Wisniewski?

8 MR. ROTSKO: The latter.

9 Q. So other than your conversations
10 with Mr. Wisniewski as your attorney, what
11 discussions have you had with Firearms Policy
12 Coalition about this?

13 A. None. It was really handing it
14 over to work with Nick.

15 Q. Did you comment on the Facebook
16 post that you mentioned from the Firearms
17 Policy Coalition?

18 A. It was a direct link through
19 their website that allowed me to enter my
20 contact information.

21 Q. So it was like a form?

22 A. Yeah. Hyperlink on Facebook, you
23 click it, and it brings me to their site.

24 Q. And let me ask the same question
25 regarding the Second Amendment Foundation.

1 J. Sears

2 Other than conversations with
3 Mr. Kraut relating to the case, what
4 conversations had you had with Second
5 Amendment Foundation?

6 A. I don't believe, any.

7 I was primarily through Firearms
8 Policy Coalition.

9 Q. Got it.

10 How long have you been involved
11 with the Firearms Policy Coalition?

12 A. I am not sure when my first
13 donation was. It was probably three or four
14 years ago.

15 Q. Are you a member?

16 A. I believe so.

17 Q. You said you like them.

18 What was it that you liked about
19 the organization?

20 A. That they challenge
21 unconstitutional gun laws.

22 Q. And can you explain that a little
23 further?

24 A. Laws that prohibit Americans from
25 possessing weapons; basically, you know, any

1 J. Sears

2 law that is in opposition of peoples'
3 fundamental rights to own weapons.

4 Q. And do you believe that people
5 have a fundamental right to own any weapon?

6 A. Yes.

7 Q. Any weapon at all?

8 A. Yes.

9 Q. So including the assault weapons?

10 A. As New York defines them, sure.

11 I didn't think assault weapons
12 are a thing. It is a marketing term.

13 Q. Can you explain to me what you
14 mean by that?

15 A. An assault weapon, as New York
16 labels it, is a semiautomatic rifle or
17 shotgun.

18 So yes, you know, there is not a
19 class that is an assault weapon.

20 Q. But New York doesn't prohibit all
21 semiautomatic rifles and shotguns, correct?

22 A. Ones with detachable magazines,
23 yes, or additional features, which I would
24 argue makes that the true weapon, not a
25 watered down form of it.

1 J. Sears

2 Q. So you think a New York compliant
3 gun of the sort that you have is not a true
4 semiautomatic rifle?

5 A. It is a semiautomatic rifle, but
6 it doesn't possess the features that make it
7 as desirable or, you know, able to use the
8 way it was intended.

9 Q. And intended how, and by whom?

10 A. Intended by the manufacturer,
11 ArmaLite; Eugene Stoner, who designed it.

12 You know, there is two types of
13 compliant semiautomatic rifles in New York,
14 right? There is the version that I have,
15 that I explained that I use more often, the
16 M&P, that has the capability to accept a
17 detachable magazine, because it doesn't have
18 features.

19 The other way you can have a
20 semiautomatic rifle in New York of an AR
21 variation is if you pin the magazine into the
22 gun so it can't accept a detachable magazine.

23 You can then have your pistol
24 grip, stock, muzzle device. But to do that,
25 you then need to break the gun open via the

1 J. Sears

2 rear hinge pin, flip the gun open and load it
3 through the receiver of the gun.

4 So neither one of these types
5 that I can own in New York are ideal for
6 either competition or home defense.

7 I made the decision that I would
8 opt for the detachable magazine variation,
9 because if a load fails to -- if a round
10 fails to load into the gun, you can't clear
11 out a malfunction if you can't release the
12 magazine.

13 So, you know, therefore, if there
14 is a magazine lock, and something happens
15 with the gun, you know, you are going to have
16 to take it to the gunsmith to fix the gun.

17 With a featureless rifle, I can
18 drop the magazine out, I can probably split
19 the gun apart, and I can fix that relatively
20 quickly, you know, in a competition or a
21 defense scenario.

22 Q. If you have a detachable
23 magazine, couldn't it have the same jam with
24 the next magazine?

25 A. It could.

1 J. Sears

2 Q. So you discussed the purpose for
3 which the rifle was originally designed by,
4 was it Eugene Stoner?

5 A. Uh-huh.

6 Q. And the ArmaLite Corporation.
7 Can you walk us through your
8 understanding of what the AR rifle was
9 designed for, and how it came about?

10 A. Sure.

11 The most prevalent round at the
12 time was 30-06, which huge bullet mostly
13 these days is used like a deer rifle
14 cartridge. Ammunition was heavy to carry.

15 They wanted to create something
16 that was a more modern weapon, that would
17 have ammunition that was smaller and easier
18 to carry.

19 And they came up with this
20 platform: Very simple, easy to use, easy to
21 clean, and they created the AR platform.

22 Q. And what is the relationship
23 between the AR-15 and the M-16?

24 A. The AR-15 is a civilian version
25 of the M-16.

1 J. Sears

2 The M-16 has select fire, so when
3 you operate the safety, the safety is on, you
4 flip it, it goes to a semiautomatic rifle.

5 You pull the trigger. One
6 trigger pull, one bullet comes out.

7 M-16 has the select fire option
8 which essentially lets you pull the trigger,
9 once bullets keep coming out, until you let
10 the trigger go.

11 Q. Automatic fire?

12 A. Yes.

13 Q. Do you know if members of the
14 military will use automatic, semiautomatic
15 fire, or both?

16 A. In their day-to-day like roles in
17 war zones?

18 Q. In combat.

19 A. It depends on what they are
20 coming up against.

21 If they need suppression fire,
22 they will probably go with the automatic
23 option.

24 Q. Would they go with the
25 semiautomatic option, in certain

1 J. Sears

2 circumstances?

3 A. In certain circumstances, likely,
4 sure.

5 Q. What circumstances would those
6 be?

7 MR. ROTSKO: Objection, calls for
8 speculation.

9 Q. But you can answer.

10 A. If you needed, you know, one or
11 two more precise shots, you would opt for the
12 semiautomatic fire, versus something that is
13 more a burst, and harder to control.

14 Q. And do you know whether members
15 of the military do, in fact, use
16 semiautomatic fire in their M-16's?

17 A. I would imagine, from interviews
18 and things I read.

19 Q. And do you believe that it is
20 unconstitutional to ban the M-16?

21 A. Yes.

22 Q. Including the automatic fire
23 aspect of it?

24 A. Yes.

25 Q. Why?

1 J. Sears

2 MR. ROTSKO: Objection, calls for
3 a legal contusion.

4 But go ahead and answer, if you
5 would like.

6 A. In my belief -- I mean, in my
7 belief, the Second Amendment, if we are
8 looking at what the militia means, in terms
9 of words that were used in the framing and
10 that period of time, yeah, the militia is
11 everyone, you know, in this room, in this
12 city and state, of age to fight.

13 It was about having people well
14 trained. When they mean regulated, they mean
15 people who were equipped, who were able to
16 drill and practice with their weaponry. And
17 it was about having a citizenry who was ready
18 to essentially become army, and have the arms
19 available to a standing army, as we didn't
20 have a standing army at that time.

21 So if we are reading it the way
22 the framers intended it, every citizen should
23 have access to use a weapon that our military
24 has.

25 Q. I mean, our military has a lot of

1 J. Sears

2 weapons. Our military has Apache
3 helicopters.

4 Should citizens have those?

5 A. Yeah.

6 Q. Our military has drones that fire
7 Hellfire missiles, those?

8 A. If you can afford it.

9 Q. Our military has intercontinental
10 ballistic missiles that can destroy cities
11 all the way on the other side of the world.

12 Should private citizens have
13 those?

14 A. If you can.

15 Q. Why?

16 A. Why not?

17 MR. THOMPSON: You guys want to
18 take a quick break?

19 MR. ROTSKO: Sure.

20 (Whereupon, a short recess was
21 taken at 2:38 p.m., and testimony
22 resumed at 2:47 p.m.)

23 Q. Mr. Sears, thank you again.

24 Just a couple of quick questions
25 before we get back into the substance.

1 J. Sears

2 During the break, did you speak
3 with anyone about the substance of your
4 testimony?

5 A. My team.

6 Q. Did you review any documents
7 during the break?

8 A. No.

9 Q. And going back, we talked about
10 your conversations with Firearms Policy
11 Coalition in the run up to this case.

12 Outside of conversations with
13 counsel, did you speak to anybody else about
14 bringing this case?

15 A. No.

16 Q. Did you ask anybody's advice, or
17 discuss it?

18 A. No.

19 Q. Have you discussed it with
20 coworkers?

21 A. No.

22 Q. Family members?

23 A. With my wife.

24 Q. And during the course of this
25 case, have you talked to anybody about case

1 J. Sears

2 development?

3 A. No.

4 Q. Have you posted at all on social
5 media, or sent any e-mails about this case?

6 A. No.

7 Q. Are you on social media?

8 A. Yes.

9 Q. What social media sites are you
10 on?

11 A. Linkedin, Facebook and Instagram.

12 Q. And can I ask, what is your
13 Instagram account name?

14 A. It is at keeping realtor. I made
15 it when I was a real estate agent, and use it
16 mostly to stay in touch with old friends.

17 Q. I like the pun.

18 And your Linkedin and Facebook,
19 are those in your name?

20 A. My name.

21 Q. And no other social media
22 accounts?

23 A. I manage a Linkedin and a
24 Facebook for our company, Sears Advisory
25 Group.

1 J. Sears

2 Q. Do you post on any online forum?

3 A. No.

4 Q. So why don't we move to
5 documents.

6 I am going to show you a document
7 which --

8 MR. THOMPSON: And, Maria, this
9 is not the same as what was Exhibit A in
10 Mr. Lane's deposition.

11 Q. Do you recognize this document?

12 A. I do.

13 Q. What is this document?

14 A. The Declaration of James Sears In
15 Opposition to Defendants' Motion to Dismiss.

16 Q. And is that your signature on
17 page 3 of this document?

18 A. It is.

19 MR. THOMPSON: Can I ask that it
20 be marked as Defendant's Exhibit 1.

21 (Whereupon, a document was marked
22 as Defendant's Exhibit 1 for
23 identification, as of this date.)

24 Q. So this the same document that we
25 previously discussed; is that correct,

1 J. Sears

2 Mr. Sears?

3 A. Yes.

4 Q. So if I can direct your attention
5 to paragraph 4, you mentioned an LMT MARS-L
6 rifle.

7 What is that rifle?

8 A. It is an AR patterned rifle,
9 chambered and 5-5-6 NATO, that I would like
10 to own.

11 Q. And what does LMT stand for?

12 A. I couldn't tell you. It is the
13 company name that makes it.

14 Oh, I do know, actually: Louis
15 Machine Tools.

16 Q. And what about MARS?

17 A. I assume the M stands for
18 something. I would imagine the A-R-S in MARS
19 stands for the ArmaLite. I think the AR
20 pattern that would be my best guess.

21 Q. Does the L indicate anything?

22 A. Not that I am aware of.

23 Q. Why do you intend to purchase
24 this rifle in particular?

25 A. I like the features that it comes

1 J. Sears

2 with out of the box.

3 It has an ergonomically friendly
4 pistol grip. It has, I think, one of the
5 better telescoping stocks already on the gun.

6 And it has what they call a
7 monolithic upper receiver, whereas the hand
8 guard and the upper receiver is all one
9 piece. So if you were to mount an -- you can
10 mount an optic further up on it, on the hand
11 guard, and you can mount, you know, a laser
12 or illumination device on there without
13 worrying that the hand guard is going to move
14 in any way, compared to most other AR
15 platforms, where the hand guard is attached
16 to the upper receiver via some type of lug
17 nut or clamp.

18 Q. And is the monolithic upper
19 receiving prohibited under New York law?

20 A. It is not.

21 Q. So let me ask, the LMT company --
22 I am sorry, Lawrence Machine Tools?

23 A. I believe it is Louis. I am not
24 positive on that, though.

25 Q. Is there something specific that

1 J. Sears

2 you like about that company?

3 A. They have a reputation for making
4 very high quality and durable weapons.

5 Q. Is that a representation based on
6 anything specific?

7 A. Reviews that I have read for them
8 online.

9 I believe, you know, certain
10 special forces groups use them when they are
11 able to use their own weapons. And the few
12 that I have seen and come in contact with
13 appear to be very well made.

14 Q. And do you know, do special
15 forces group use rifles -- do they use the
16 LMT MARS-L rifle?

17 A. I don't know.

18 Q. So how did you choose this
19 particular type of rifle as the one put in
20 issue here?

21 A. They have a great reputation.

22 Again out, of the box, if I were
23 to get a different variation of a similar, I
24 would have to spend additional to put the
25 pistol grip and the stock on it.

1 J. Sears

2 Theirs comes with -- they are one
3 of the few companies that makes the
4 monolithic upper receiver where the hand
5 guard is, you know, the same piece as the
6 upper receiver.

7 Q. Did you seek them out online?

8 A. I did research online.

9 Q. And where did you go to do that
10 research?

11 A. Google. You know, best AR's out
12 there for accuracy, reliability.

13 Q. Do you remember any sites in
14 specific that you went to?

15 A. I went to their direct site and
16 looked at various retailers online, as well,
17 that carried it.

18 Q. Do you recall which retailers?

19 A. There is a marketplace called Gun
20 Broker, where various FFLs or federal
21 firearms licensees, basically gun dealers,
22 post their guns for sale. It is like an
23 eBay, if you will, for firearms.

24 And if you do purchase it, you
25 provide them with the information for your

1 J. Sears

2 local gun dealer, and they transfer it to the
3 gun dealer, and you go there to pick it up
4 and run your background check.

5 Q. If you purchase this rifle, that
6 is how you would purchase it, through a local
7 gun dealer?

8 A. I can't purchase this rifle,
9 because no one will sell it New York, because
10 it is not compliant.

11 Q. If, hypothetically, you could,
12 would you purchase it that way, through a
13 local gun dealer?

14 A. I would have to go to a local gun
15 dealer to purchase it, yes.

16 Q. Do you know, which local gun
17 dealer would you use?

18 A. I have two different ones that I
19 like.

20 You want their names.

21 Q. Sure.

22 A. New England Sportswear in White
23 Plains, New York, and A&G Firearms in
24 Bardonia, New York.

25 Q. And so can you compare and

1 J. Sears

2 contrast this rifle, the LMT MARS-L, with the
3 rifle that we discussed earlier, the rifle
4 that you currently use the most?

5 A. This rifle, if I were to possess
6 it, let's say, in a free state, like Texas,
7 where I can just buy the gun from my FFL, to
8 the one that I have like the New York
9 compliant version that I own?

10 Q. Yes, correct.

11 I am not sure how I feel about
12 the term free state. Comparing and
13 contrasting this rifle that you would like to
14 own with the rifle that we previously
15 discussed that you use the most?

16 A. Sure. Whereas my rifle has a fin
17 grip, where I can't wrap my hand all the way
18 around the gun, this one has a traditional
19 pistol grip stock, a pistol grip, which would
20 allow me to reach the safety and deploy it
21 with, you know, more ease and reapply it with
22 more ease.

23 It has a telescoping stock, which
24 means it can slide in and out.

25 So my rifle has a fixed stock, so

1 J. Sears

2 it is at a length that is comfortable for me.

3 It is uncomfortable for my wife
4 to shoot it.

5 With the LMT MARS, we would both
6 be able to take share that gun. She could
7 push a little hinge and slide it forward to
8 fit, you know, what they call your length of
9 pole, really the distance that it takes from
10 your shoulder pocket, you know, to your hand.

11 Q. So at risk of derailing the
12 conversation, does your wife also own
13 weapons?

14 A. She does.

15 Q. In addition to the ones that we
16 previously discussed, when I asked you --

17 MR. ROTSKO: Objection, that
18 Mr. Sears' wife's weapons are not at
19 issue in the case.

20 You may answer, though.

21 A. She does. She owns several
22 weapons, several of which, I guess, since we
23 have been married, we co-own, that are on
24 both of our permits.

25 Q. So when earlier in the deposition

1 J. Sears

2 I asked you how many rifles, how many
3 shotguns, how many pistols, were you counting
4 your wife's weapons in those totals, or are
5 those separate?

6 A. I was including those.

7 Q. And do you have any children?

8 A. No.

9 Q. And do you and your wife live in
10 the same place?

11 A. Yes.

12 Q. So in your declaration you talk
13 about telescoping stock, pistol grip and
14 muzzle device, as well as a detachable
15 magazine.

16 So what is a detachable magazine?

17 A. A detachable magazine is a
18 magazine that if you push the magazine
19 release button on the right side of an AR
20 platform, the magazine will eject. There is
21 basically a spring retention that keeps the
22 clamp into the well of the gun.

23 Compare that to the other way you
24 can make a New York rifle compliant, which is
25 what they commonly referring to as pinning

1 J. Sears

2 the magazine.

3 So to my knowledge, there is
4 couple of ways to do it: Basically buy an
5 aftermarket magazine release button or kit,
6 and you basically put a screw in it, so you
7 can't depress the spring; or there is a model
8 where there is no spring at all, so once the
9 magazine is in there, it is in there. I
10 think you have to go to a gunsmith to drill
11 it out.

12 So once the magazine is in there,
13 the magazine is in there.

14 If the magazine fails, you know,
15 somehow, if it is a plastic or metal
16 magazine, if any part of it breaks, you are
17 going to have to drill out the gun to remove
18 the magazine.

19 Q. And do you know, are there rifles
20 that are sold that have just a fixed
21 magazine, without that kind of pin?

22 A. I have seen them sold.

23 Sorry. Can you repeat?

24 Q. Are there rifles that are sold
25 that have a fixed magazine, where the

1 J. Sears

2 magazine is built into the gun, without that
3 sort of pin that you just described?

4 A. In New York?

5 Q. In New York, or anywhere?

6 A. I don't think there is any other
7 way to affix a magazine. I don't think they
8 are making a lower receiver that has a
9 magazine built into it. It is just -- no.

10 They don't sell like a magazine
11 that is being one piece of the gun.

12 Q. So let me ask, why do you prefer
13 a detachable magazine to a fixed magazine?

14 You had mentioned a potential jam
15 situation.

16 Any other reason in addition to
17 that?

18 A. The jam is the biggest one.

19 For whatever reason, you know,
20 the way the bolt and the cycling of the gun
21 works, if two rounds, what we call a double
22 feed, if the bolt carrier group drags the top
23 round off of the magazine and the gun, and it
24 catches the second one, you have two bullets
25 trying to get into the chamber of the gun.

1 J. Sears

2 This essentially creates an issue
3 that on a regular, you know, non-New York
4 compliant magazine, a commonly used AR, you
5 could drop the magazine, and you can pull the
6 charging handle, and it gives you the
7 opportunity to get in and try to fish out the
8 two magazines or two rounds that are stuck in
9 there.

10 If your magazine is locked, you
11 really can't do anything, 'cause you are not
12 going to be able to drag the bolt open. It
13 is stuck in place, you know, the metal on
14 metal friction, depending on how hard the
15 bolt dropped.

16 You know, you are probably going
17 to go and have the gunsmith bang out the pins
18 and take it apart.

19 So for reliability standpoint,
20 you would never use a mag locked gun in self
21 defense.

22 Q. Is it also true to say that a
23 detachable magazine just makes it faster to
24 reload?

25 A. You could say that, although

1 J. Sears

2 there are different reloading solutions that
3 are available for pinned magazines.

4 Q. Can you tell me a little bit more
5 about that?

6 A. I don't know what they are
7 called. It is something there where you go
8 through the ejection port on the right side
9 of the guns, and I think they call them speed
10 clips.

11 Where you can load it that way,
12 you know, if you are trained with it, someone
13 could probably get pretty fast with that.

14 Q. Outside of the potential jam
15 issue that we have discussed, is a detachable
16 magazine better for self defense than a fixed
17 magazine?

18 A. Yes.

19 Q. Why?

20 A. Besides the lack of, you know,
21 jamming and fixing malfunctions, you have the
22 ability to easily carry more ammunition, if
23 you need it.

24 And in New York, being limited to
25 ten rounds of ammunition, you know, ten

1 J. Sears

2 rounds in a gun isn't a lot, if there were,
3 you know, numerous people that you needed to
4 defend yourself from.

5 Or in a competitive shooting
6 scenario, if you, you know, needed to shoot
7 ten or more targets, you would want to have
8 extra magazines, to reload your gun quickly.

9 Q. Let's stick to the self defense
10 scenario.

11 Why would you need more than ten
12 rounds?

13 A. What if there is more than ten
14 people you need to protect yourself from?

15 Q. I mean, is there a scenario where
16 you are under attack by more than ten people?

17 A. I have never been in one, but you
18 read about it.

19 Q. Can I ask where you read have
20 about it, and what kind of scenario?

21 A. Violent home invasions, where
22 there are, you know, multiple attackers.

23 And, you know, I don't know.
24 Under duress, I don't know if someone is
25 hitting every shot that they take.

1 J. Sears

2 You know, if there is five home
3 intruders, and you don't stop them, you might
4 need more than ten rounds.

5 Q. Are you aware of any situation
6 like that?

7 A. I have read a couple in the past
8 year or two.

9 I don't know any off the top of
10 my head.

11 Q. Can I ask what you have read?

12 A. You see stories every couple of
13 months, a mother with an AR-15 defends her
14 child from two or three or four, you know,
15 home intruders.

16 Q. Is there a specific situation
17 that you are thinking of?

18 A. I can picture articles. I
19 couldn't tell you the states, you know, or
20 people involved.

21 Q. So sitting here today, you
22 couldn't tell me of any situation where
23 someone has needed more than ten rounds to
24 defend themselves?

25 A. Off the top of my head, no.

1 J. Sears

2 But, you know, I am sure we can
3 easily find several cases.

4 Q. Is a detachable magazine
5 necessary for a Springfield, or sorry, LMT
6 MARS rifle?

7 A. Yes.

8 Q. Why?

9 A. For the gun to operate the way
10 you would want it to, you need a magazine, in
11 order to get rounds into the chamber of the
12 gun.

13 Q. Could you have an LMT MARS rifle
14 with a pinned magazine or fixed magazine?

15 A. No. They don't sell it like
16 that.

17 Q. You also mentioned three
18 ergonomic safety features: Telescoping
19 stock, pistol grip and muzzle device.

20 Can you describe a telescoping
21 stock for me?

22 A. Sure. The buffer tube at the
23 rear of the gun, which is basically a hollow
24 tube with which the bolt carrier group rides
25 on the spring, you know, it takes the gas

1 J. Sears

2 system from the round that is fired, runs it
3 back off the spring. And when it goes
4 forward, that is what strips the round into
5 the chamber, you know, the next round. That
6 is how it reloads itself.

7 On that, you have the ability to
8 affix a piece of plastic that is the stock,
9 generally a triangle.

10 On the bottom of the buffer tube
11 there is several notches where you pull
12 basically a spring loaded clamp.

13 You can adjust the length of the
14 pole, as I mentioned earlier, basically how
15 long or short the back of the gun is.

16 And when you have the ability to
17 add a telescoping stock, you can change --
18 outside of the length of the pole, you can
19 change the size of that stock. You can have
20 a bigger piece of plastic on the top to get
21 what we call a cheek weld, where you put your
22 gun to better see your sights.

23 There is really endless ways you
24 can customize it with the aftermarket parts
25 out there.

1 J. Sears

2 Q. Is telescoping stock a necessary
3 part of the LMT MARS-L rifle? Do they all
4 come with telescoping stocks?

5 A. They do.

6 Q. Could you have one without a
7 telescoping stock?

8 A. You could if, you know, you were
9 able to obtain one and make modifications to
10 it on your own.

11 Q. And is a telescoping stock -- how
12 does a telescoping stock play into a self
13 defense scenario?

14 A. For ease of storage in a gun
15 safe, it is easier to have it fully, you
16 know, shortest length possible, as opposed to
17 fully elongated, taking up more room.

18 The fully shortened version,
19 where I would easily store it, isn't
20 naturally the most comfortable for me.

21 So there quickly, if I were to
22 shoot it in a self defense competition, I
23 would elongate the stock, make it comfortable
24 for me.

25 Conversely, if I am not home, I

1 J. Sears

2 am not able to use the weapon. You know, my
3 wife, different size than me, would be able
4 to use the gun and fit it to herself, for
5 maximum accuracy.

6 Q. So would it be correct to say
7 that the telescoping stock is more about
8 storage and customization than about self
9 defense?

10 A. I would disagree.

11 I think the storage is a benefit
12 of it. I think the self defense aspect in
13 fitting the gun to the person is the primary
14 benefit of it.

15 Q. Couldn't you have a solid or
16 fixed stock that is well fitted to you?

17 A. Well fitted to me, but then I
18 lose adoptability for my wife to use it as
19 well.

20 Q. Are you aware of any of situation
21 in which a telescoping stock has been
22 necessary for self defense?

23 A. Outside of the news, where you
24 see people, you know, grabbing their husband
25 or their spouse's, you know, rifles and

1 J. Sears

2 fitting to it to themselves, no, not
3 firsthand.

4 Q. Can I ask, is there any specific
5 scenario or incident that you are thinking
6 of, when you talk about the news?

7 A. Same thing. Just, you know,
8 articles that I have read in the past year or
9 so, but nothing, you know, I can name:
10 State, you know, defendants.

11 Q. When you say articles, where are
12 you getting this news that you are referring
13 to?

14 A. My Apple News app. Generally
15 LinkedIn. People share articles there as
16 well.

17 Q. Can you think of any specific
18 news sources on which you have read this
19 articles?

20 A. As in like the publishers and
21 organizations?

22 Q. Yeah. Authors, you know,
23 anything that would identify the articles
24 that you are talking about?

25 A. I would say, I don't know: New

1 J. Sears

2 York Times articles, Washington Post,
3 New York Post, major publications, smaller
4 regional ones that get picked up by larger
5 publications.

6 Q. Sitting here today, can you think
7 of any specific article or specific incidents
8 where a telescoping stock has played into a
9 self defense situation?

10 A. Not that I would be able to name,
11 you know, again the state, the case, you
12 know, who the defendant party was.

13 Q. When you say earlier you talked
14 about how a telescoping stock can make a
15 weapon more comfortable for use in a self
16 defense situation, can you tell me a little
17 bit more about that?

18 A. Sure. You know, if you have a
19 fixed stock, you have to shoulder the gun,
20 right, and a grip is where the grip is.

21 For me, it is going to be longer,
22 right, because the distance between my hand
23 and my shoulder where I am going up to aim is
24 a certain length.

25 My wife, she is going to be

1 J. Sears

2 reaching -- she might not have the same
3 control over the trigger. She might not have
4 the same ability to employ or deploy the
5 safety.

6 So it becomes a safety issue, if
7 she can't adequately reach the controls of
8 the gun because we limited in the stock's
9 ability to telescope.

10 Q. But in that scenario, wouldn't
11 she need to adjust the stock herself?

12 A. If she has a telescoping stock,
13 sure.

14 But if it was fixed, she would be
15 unable to do that. She would be left with
16 the length of the gun as it stood.

17 Q. How long does it take to adjust
18 the telescoping stock?

19 A. Under a second.

20 Q. And is it possible to adjust the
21 telescoping stock wrong?

22 A. No. You can have it set
23 differently than you might have intended.

24 But again, you know, if you get
25 up here, and let's say it is in between the

1 J. Sears

2 grooves on the bottom of the gun, you would
3 go to apply force to it, would click down, do
4 whatever, you know, the smaller size is.

5 If it is in between the two, in
6 which case, if it is not comfortable, she
7 can't see the sights, reach the controls,
8 what have you, you know, quickly depress the
9 level, you side it back out to where you need
10 it.

11 Q. Couldn't you over shoot and end
12 up with it being shorter than you wanted?

13 A. You could.
14 Better shorter than too long,
15 though.

16 Q. Wouldn't that all just take extra
17 time?

18 A. It would.

19 Q. So you mentioned also a pistol
20 grip.

21 Can you talk to me about the role
22 that the pistol grip plays?

23 A. Ergonomically, it is your main
24 point of contact to both support the weapon
25 and to deploy the safety, or employ the

1 J. Sears

2 safety as well as press the trigger; so
3 ergonomics and stability and, you know,
4 safety and accuracy.

5 Q. So does the pistol grip make the
6 rifle more accurate?

7 A. Yes.

8 Q. And when you --

9 A. It makes it safer, as well.

10 Q. Can you explain to me how safer?

11 A. If this is the pistol grip, you
12 know, or this is just a bottle of water, it
13 is easier to hold the water like this, or
14 with a fin grip.

15 Do you want to hold your bottle
16 like that (indicating)?

17 You don't have the same stability
18 that you have with a New York compliant grip,
19 holding something like this, versus going all
20 the way around.

21 And on top of that, if the, you
22 know, Evian side is where the safety is locked
23 on a traditional AR rifle, you have to use
24 your other hand here to get to the safety, to
25 deploy, it versus with a pistol grip, your

1 J. Sears

2 hand is already here so you can -- you know,
3 if you need to use the weapon, you use it,
4 you are done with it. You put the safety
5 right back on the pistol.

6 Taking your hand off now the gun
7 is wobbly, because you are holding the gun
8 like this. You have to come around and
9 depress it that way.

10 Q. So when you shoot competitively,
11 when you shoot rifles competitively, do the
12 rifles that you shoot have pistol grips?

13 A. Yes, because I shoot the New York
14 one, that doesn't have any features on it
15 and, you know, I am here struggling, because
16 you need the detachability of the magazine,
17 because most of the rounds are longer than
18 10 -- most of the stages are longer than ten
19 rounds of fire.

20 Q. So lastly, the muzzle device, can
21 you explain what the muzzle device is?

22 A. Sure. A muzzle device is just a
23 general term to talk about anything that you
24 put on to the end of the barrel of the gun on
25 the muzzle end.

1 J. Sears

2 Typically, semiautomatic rifles
3 come with what you call an A-2 flash hider,
4 for like a birdcage flash hider.

5 Essentially what it is, it is
6 just a little valve at the end. There is
7 generally three cuts in the metal.

8 And in theory, what that does is
9 it allows the gas, as the pressure builds and
10 the round comes out, to travel up, and it
11 mitigates some of the flash.

12 So if you were in a self defense
13 shooting at night, or in the dark, you are
14 not going to get blinded by a huge fireball
15 that comes out of the front of the barrel.
16 It is going to kind of dissipate itself a
17 little bit more naturally.

18 Alternatively, there are
19 compensators, which instead of blasting the
20 gas kind of up, you know, it will shoot -- in
21 addition to up, it will shoot it sideways, as
22 well, which helps you keep the muzzle
23 flatter.

24 So naturally, the gun wants to go
25 up when you shoot it. This helps tame, you

1 J. Sears

2 know, some of the recoil in the muzzle rise,
3 which is beneficial for long distance
4 targeting shooting. It keeps you steadier,
5 and you can get the second round off quicker.

6 Q. And so the flash suppressor, and
7 I am sorry, the second one?

8 A. Compensator.

9 Q. The compensator, those are the
10 two muzzle devices that you would like to
11 have?

12 A. I would like to have a suppressor
13 or, you know, commonly referred to as a
14 silencer.

15 But New York doesn't allow me to
16 possess, you know, form one, I guess ATF
17 regulated items.

18 Q. And why do you want a suppressor?

19 A. God forbid I ever needed to, you
20 know, have a self defense instance in my
21 home. I would go deaf, the way the law
22 currently stands. The sound in a small room
23 would really impair my hearing.

24 What a suppressor does, it is a
25 series of baffles on the inside, like a car

1 J. Sears

2 muffler, so it absorbs the gases. It makes
3 it a little bit more quieter to shoot.

4 My ears would still be ringing,
5 but I probably, you know, wouldn't be
6 bleeding out of my ears.

7 Q. And the case -- the volume of the
8 shot, is that going to be different for
9 different kinds of guns?

10 A. Sure. Depending on the length of
11 the barrel and the caliber of the rounds,
12 yes.

13 Q. So is the LMT Mars-L that we are
14 discussing, is that going to be louder or
15 softer than other guns?

16 A. All 16-inch barrel AR rifles
17 shooting the same ammunition would be, give
18 or take, the same sound.

19 Q. So would it be correct to say
20 that the LMT Mars-L would be just as loud as
21 the gun that you currently have --

22 A. Correct.

23 Q. -- that you currently use the
24 most?

25 Would it be louder or softer than

1 J. Sears

2 a handgun, pistol, revolver?

3 A. Depends on the type of ammo used
4 and the handgun.

5 Q. Do you know, in terms of
6 suppressor, is that part of the relief that
7 you are seeking in this case, the declaration
8 that suppressors are protected by the Second
9 Amendment, and that prohibitions on them are
10 unconstitutional?

11 A. I don't believe that is in the
12 relief that we were seeking initially, and I
13 don't think we can act it on now, but that is
14 more of me wishfully thinking.

15 Q. So let me ask the similar
16 questions on each of these, each of these
17 muzzle attachments.

18 So let's start with a suppressor.

19 Other than muffling the sound of
20 it in order to spare your ears, is there --
21 how is a suppressor necessary for self
22 defense?

23 A. You know, the main reason is to
24 spare, you know, my hearing.

25 They make them basically in two

1 J. Sears

2 different formats, you know, the range in
3 between them.

4 The maximum is, you know, they
5 are really quiet suppressors. Some of them
6 give off more flash.

7 The other side of the spectrum,
8 you know, what they call a signature
9 mitigation, where it might not have the same
10 flash, or the unburnt gunpowder illuminating
11 at the end of the gun. And you try to find a
12 happy medium for what your needs are.

13 If I were to get this gun, I
14 could own a suppressor. I want the one that
15 suppresses the most sound and makes it the
16 quietest for me, you know, to deploy.

17 Q. And are you aware of any
18 situation in which anyone has used a
19 suppressor for self defense?

20 A. Personally, no.

21 But again, you know, it happens
22 every year. People use suppressed guns for
23 self defense.

24 Q. But sitting here today, are you
25 aware of any specific situation?

1 J. Sears

2 A. Anyone by name? No.

3 Q. Or any -- or the description of a
4 specific situation that happened?

5 A. No. I am sure I can find them,
6 but no.

7 Q. Same question for a flash
8 suppressor.

9 What role does a flash suppressor
10 play in self defense?

11 A. It doesn't do much.

12 You know, if we are comparing the
13 LMT Mars rifle with a flash suppressor to my
14 New York compliant gun that just has a bare
15 barrel, and nothing on it, is going to be
16 less of a fireball effect than the just, you
17 know, capped barrel or crowned barrel,
18 because it allows some of gas to escape
19 sideways, and it is not just a huge fireball
20 coming out.

21 Q. And how does that enhance your
22 ability for self defense?

23 A. If it was a no light or low light
24 situation, I wouldn't be blinded by -- I
25 would be less likely to be blinded by the

1 J. Sears

2 initial shock.

3 Q. Would the flash from your rifle,
4 and similarly, the sound of the rifle,
5 wouldn't that also have an effect on, you
6 know, whatever aggressor there is in this
7 scenario?

8 A. It depends on their location, you
9 know, relative to the firearm, and wherever I
10 am.

11 Q. And these attachments that we
12 have discussed: The pistol grip, the muzzle
13 devices, have you had the opportunity to use
14 any of these accessories?

15 A. I have.

16 Q. When, and where?

17 A. Several times over the past three
18 to four years in New Jersey, there is a range
19 that rents firearms. Rules are similar to
20 New York, but they have guns with the
21 features on them.

22 And then in Vermont, where my
23 wife's family is, from my brother-in-law has,
24 you know, a standard common use AR-15.

25 Q. So you also mentioned in your

1 J. Sears

2 declaration that the rifle that you want is a
3 small caliber weapon, chambered for the 5.56
4 by 45 millimeter NATO cartridge.

5 Can you explain what caliber
6 means?

7 A. Can I explain what? Sorry.

8 Q. What caliber means?

9 A. Caliber is, I guess, commonly
10 used in reference to the diameter of the
11 bullet.

12 Q. And so when we say small caliber,
13 what does that mean?

14 A. I think generally the delineation
15 between a small and a large caliber rifle
16 would be probably at, you know, the 23 mark,
17 you know, so a 30 round would be a large
18 caliber. So a 30-06, 3-0-8 would fall in the
19 large caliber.

20 You know, a 5-5-6 or, you know,
21 more commonly interchangeable with a point
22 2-2-3 round, you know, closer to a 22 long
23 rifle, you know, smaller shell or smaller
24 bullet in diameter, it is on the smaller end
25 of the spectrum.

1 J. Sears

2 Q. Why do you want a small caliber
3 rifle?

4 A. It is more ideal for home
5 defense.

6 I guess primary, right, if we are
7 talking about my day-to-day use, it is
8 cheaper to buy than a 3-0-8 rifle.

9 So if I am going to shoot
10 competition, I am expending a large amount of
11 rounds, I want to use the cheaper of the two
12 ammunitions.

13 There is less recoil than a large
14 caliber rifle. The small size of the bullet
15 means that it is less likely to over
16 penetrate, you know, should I have an errant
17 shot in a home defense scenario, where a
18 handgun round, a shotgun round, higher mass,
19 that mass isn't imparted as well, dissipated,
20 when it goes through, you know, a wall, a
21 door, a ceiling, what have you.

22 Q. Would a larger caliber round gun
23 that fires larger caliber rounds be better
24 for self defense than the Mars rifle?

25 A. If you had 100 percent accuracy,

1 J. Sears

2 right, yeah.

3 Q. Can you explain to me why?

4 A. If you had one person that was
5 threatening your life, a larger bullet would
6 impart more power into them, and more likely
7 stop them from aggressing upon you, than a
8 smaller round.

9 The trade off is if you need more
10 than one trigger press, the larger bullets
11 can have more recoil and more flash and more
12 sound, so it is going to disorient you more,
13 if you are inside. The gun is going to kick
14 you more. It is going to be harder to get
15 you back on sights, and on top of the, you
16 know, fact that the cost for self defense
17 round is probably triple what a 2-2-3 or
18 5-5-6 round is.

19 Q. So let me ask you the same
20 question the other way.

21 Would you be better off for self
22 defense with a rifle that fires smaller
23 caliber bullets?

24 A. No, because one, you get to the
25 5-5-6 or 2-2-3.

1 J. Sears

2 I would argue anything below
3 that, you lose the power that you get from
4 that round. You lose some of the velocity,
5 and it doesn't make it as ideal.

6 Q. And so when you talk about the
7 NATO cartridge, can you explain to me what
8 that means?

9 A. You know, it is like an inches or
10 centimeters thing. It is U.S. versus the
11 rest of world with, you know, how we want to
12 talk about measurement.

13 5-5-6 NATO is just that kind of
14 the international arms community came up with
15 measuring you, know, millimeters.

16 I don't know, versus a standard
17 2-2-3, if it is the same size.

18 They are slightly different
19 pressure, as far as the gunpowder and the
20 round goes.

21 Q. Why it is called NATO?

22 A. After NATO, North American Trade
23 Organization.

24 I think they standardized that
25 for, you know, their use of the rounds.

1 J. Sears

2 Q. These are the weapons -- these
3 are the rounds that are used in typical
4 battle rifles by militaries within the NATO
5 treaty; is that correct?

6 A. Sure, for the ones that are
7 running, you know, M-17 style weapon.

8 Q. And I am sorry, I am not familiar
9 with the M-17.

10 So is the M-17 a further
11 iteration --

12 A. I am sorry, the M-16.

13 Q. So you say on paragraph 5, I have
14 determined that this model rifle best fits my
15 needs to defend myself and my loved ones, if
16 necessary, as well as for use in other lawful
17 purposes.

18 Can you tell me a little bit more
19 what -- how you came to that conclusion?

20 A. Everything I have said prior:
21 The pistol grip, the telescoping stock, the
22 ability to accept a muzzle device.

23 If the Safe Act didn't exist, I
24 would have a -- I would have a vertical grip
25 on the front for better control of the

1 J. Sears

2 weapon.

3 The monolithic upper receiver
4 that I mentioned earlier is a big factor of
5 it.

6 Traditional guns, you know, you
7 have the lower receiver. You have the upper
8 receiver, where the chamber is on the barrel
9 screws in, you have a hand guard over it.

10 The part that you hold, you can
11 mount flashlights, whatever.

12 The monolithic upper receiver is
13 attractive because it doesn't rotate. There
14 is no risk of whatever mechanism that you are
15 attaching the hand guard to, and failing.

16 Because of that, you can run your
17 optic up there, and not worry about it
18 losing, you know, what we call zero making,
19 you know, sure the point of aim is where you
20 are impacting.

21 So the monolithic upper receiver
22 is probably the main thing as to why I like
23 this AR variation.

24 Q. So how would you use, as a
25 practical matter, if you were able to buy

1 J. Sears

2 this MARS rifle, how would you use it to
3 defend yourself and your loved ones?

4 A. It would likely sit by a bedside
5 safer. If there was someone that broke into
6 my house, I would lock the door and call the
7 police, you know, tell them to get out of
8 here, I am calling the police.

9 It is there if you need it, the
10 same way I would have a fire extinguisher, if
11 I had a fire.

12 Q. So you would keep it in your room
13 in a safe; is that correct?

14 A. Correct.

15 Q. Would you carry it with you
16 outside the home?

17 A. As far as I am aware, that is
18 illegal to do, so no, unless it is in
19 transportation, locked up, not ready to be
20 deployed, separate from the ammo.

21 Q. Assuming that this weapon were
22 legal, and you were going to the grocery
23 store, would you carry it with you?

24 A. No.

25 Q. What would you carry instead?

1 J. Sears

2 A. I would carry a pistol.

3 Q. Why?

4 A. I think there is something to be
5 said, psychologically and socially, about the
6 guy who is toting a rifle on his back.

7 If, God forbid, anything
8 happened, a rifle is the best tool for the
9 job, right?

10 The pistol is a tool for
11 convenience. It is easily concealed while
12 you have it.

13 But you don't want a rifle on
14 your back. You don't want a rifle in the
15 car. God forbid, someone breaks into your
16 car and steals it, you know, it is a
17 liability.

18 Q. And again, forgive me for going
19 down there.

20 Why don't you want the rifle on
21 your back? Why not -- when we are here in
22 New York, why not walk down Broadway with a
23 rifle on your back?

24 A. Because you are going to have the
25 police called on you, because no one knows

1 J. Sears

2 what your intentions are.

3 You know, it doesn't look good in
4 the community that we live in.

5 Q. Would it scare people?

6 A. If I was rancher, you know, out
7 somewhere in rural New York, and I had
8 coyotes and livestock, yeah, I would have it
9 on my back.

10 But I don't think necessarily the
11 risk, reward and the utility of the tool is
12 needed for me to have it on my back.

13 Q. If you did you carry it on your
14 back, would it scare people?

15 A. It would.

16 I would argue, it also makes some
17 people feel safer, you know, if I am not, you
18 know, crazy looking, you know, and whatever,
19 you know, whatever that means to certain
20 individuals.

21 Q. Do you know anyone who has -- I
22 know we asked a version of this.

23 Do you know anyone who has used
24 an assault rifle inside the home to defend
25 themselves or their family?

1 J. Sears

2 A. No.

3 Q. Do you know any anyone who has
4 used an assault rifle in public to defend
5 themselves or their family?

6 A. No.

7 Q. Do you know of any specific
8 situation where anyone has ever used an
9 assault rifle to defend themselves or their
10 family?

11 A. Personally?

12 Q. Yes.

13 A. No.

14 Q. Do you know anyone residing in
15 New York who possesses the LMT MARS-L or
16 similar firearm?

17 A. No.

18 Q. Do you know whether assault
19 rifles are held by people in law enforcement?

20 A. Yes.

21 Q. And are they?

22 A. Yeah.

23 Does law enforcement like use
24 AR-15 pattern rifles?

25 Q. Yes.

1 J. Sears

2 A. Yes.

3 Q. And do you know whether there
4 are -- what rifles that meet the definition
5 of an assault rifle that were owned prior to
6 the Safe Act, and prior to the federal
7 assault weapons ban, that are held by people
8 in New York?

9 A. Do I know anyone personally that
10 has one that is like a pre-ban rifle?

11 Q. Yes.

12 A. No.

13 I would imagine most of my gun
14 dealers have them, but I have never seen them
15 or shot with them.

16 Q. Do you know whether there are
17 such things as pre-ban rifles --

18 A. Yes.

19 Q. -- that are held by New Yorkers?

20 A. Sure.

21 Q. And are there?

22 A. Yeah.

23 MR. THOMPSON: You want to take a
24 quick five-minute break?

25 MR. ROTSKO: No objections on

1 J. Sears

2 this side.

3 THE WITNESS: Sure.

4 (Whereupon, a short recess was
5 taken at 3:31 p.m., and testimony
6 resumed at 3:41 p.m.)

7 Q. Mr. Sears, do you recognize this
8 document?

9 A. I do.

10 Q. And what is this document?

11 A. This is the complaint that we
12 brought forward.

13 Q. And can I ask that this document
14 which was previously marked -- and actually,
15 does this document have a marking on it?

16 A. Is it this little sticker?

17 Q. Yes.

18 A. Yes.

19 Q. And is it marked James Exhibit C?

20 A. Yes.

21 Q. I will represent to you, that was
22 from the deposition of Mr. Lane this morning.

23 A. Okay.

24 MR. THOMPSON: Can we also mark
25 it as Exhibit 2 for this deposition?

1 J. Sears

2 Q. So if I can ask you to take a
3 look at Paragraph 14.

4 Do you see paragraph 14?

5 A. I do.

6 Q. And what does paragraph 14
7 discuss?

8 A. It is the features in which
9 New York defines an assault weapon.

10 Q. And I will direct you to
11 subparagraph A there, which talks about
12 semiautomatic rifles. Do you see that?

13 A. Yes.

14 Q. And is it correct that this is
15 the part of the definition that discusses
16 assault rifles?

17 A. Yes.

18 Q. And are you challenging the other
19 parts of this definition that discuss
20 shotguns or pistols?

21 A. Directly, I don't believe so.

22 But I would argue, you know, the
23 same conversation we are having as to the
24 features of rifles would pertain to the
25 shotguns as well, and to the frankly certain,

1 J. Sears

2 you know, the way you can employ
3 semiautomatic pistols.

4 Q. Let me ask the question another
5 way.

6 Are you, in this case, seeking to
7 have those other portions of the statute
8 struck down?

9 I would ask you not to
10 communicate with your counsel --

11 A. Sure.

12 Q. -- unless it is a question of
13 privilege, which it shouldn't be.

14 A. I would say yes. Everything we
15 have been talking about with regard to
16 features of, you know, quote, unquote,
17 assault weapons, I don't think these
18 limitations should be placed on shotguns or
19 pistols as well.

20 Q. And are you seeking to overturn
21 each and every one of the accessories listed
22 under subparagraph A?

23 A. Yes.

24 Q. Let's move on to paragraph 18.
25 You discuss how rifles built on

1 J. Sears

2 an AR style platform are the paradigmatic
3 example of the type of arm New York bans; is
4 that correct?

5 A. Yes.

6 Q. But as we discussed earlier,
7 isn't it true that one can buy AR style
8 rifles at New York gun stores right now?

9 A. Style, yes.

10 Q. Let me ask the question another
11 way.

12 At a New York gun store today,
13 couldn't you buy a rifle built on an AR style
14 platform?

15 A. Built on a platform, yes, not an
16 AR rifle as it is defined in the way it is
17 intended to be used.

18 Q. In the way you think it is
19 intended to be used?

20 A. That it was built to be used, the
21 way it was created and filed patently to be
22 used with a telescoping stock and with a
23 pistol grip and a muzzle device.

24 Q. So let me ask a little further on
25 that.

1 J. Sears

2 When you say it was intended to
3 be used with these features, can you explain
4 why you think that?

5 A. At some point in the past I have
6 seen the original sketches and the blueprints
7 of the weapon and the way it is designed.

8 It is designed to have a pistol
9 grip, it is designed to have a muzzle device,
10 and it is designed to accept a telescoping
11 stock.

12 Q. And that is because of its
13 original military use?

14 A. It is because it gives the end
15 user the customization ability to employ it
16 however they would like.

17 I can't speak to, you know, what
18 the inventor, you know, did in the '50s.

19 Q. But he invented it for military
20 use; is that correct?

21 A. For -- I believe it was an entry
22 into a government contracting contest, you
23 know, widely adopted for civilian use as
24 well.

25 Q. What is the government

1 J. Sears

2 contracting contest?

3 A. I am not an expert on military
4 contracts, but when they look for a new
5 design for, you know, a car or a gun, you
6 know, uniforms, they bid it out to whoever
7 the suppliers are, you know, and they pitch
8 them back, you know, what the government is
9 looking for, and they choose between, you
10 know, everyone who submits.

11 Q. Because it was for a military
12 contract?

13 A. I believe so.

14 Q. So let's move to paragraph 19.

15 You discuss how AR-15 rifles are
16 among the most popular firearms in the
17 nation, owned by millions of Americans. And
18 you discuss a survey by William English.

19 Have you read the survey?

20 A. At some point in the past.

21 Q. Do you remember when?

22 A. I first came across it probably a
23 couple of years ago, prior to the filing of
24 this, I think when it first came out.

25 And then, you know, I skimmed it

1 J. Sears

2 again at some point in the last year or so.

3 Q. And do you know who William
4 English is?

5 A. I do not.

6 Q. And have you ever spoken to
7 Mr. English?

8 A. I have not.

9 Q. Do you know anything about how
10 the survey was conducted?

11 A. I don't remember the criteria
12 they used.

13 Q. And other than communications
14 with counsel, have you ever spoken to anyone
15 about Mr. English's survey?

16 A. I have not.

17 Q. Do you have any personal
18 knowledge about the number of Americans who
19 have these guns?

20 A. I do not, besides, you know,
21 similar polls and estimates that I have seen
22 like this.

23 Q. And what polls and estimates are
24 you referring to?

25 A. Polls similar to this one that,

1 J. Sears

2 you know, estimate American gun ownership.

3 Q. And did you conduct any of these
4 polls?

5 A. I did not.

6 Q. So these are things that you have
7 read?

8 A. Yes.

9 Q. Can you think of any specific
10 polls or things that you have read right now?

11 A. Reports from the ATF, what their
12 estimates of gun ownership; probably results
13 from crime statistics section from the FBI,
14 as well.

15 Q. And are you an expert about gun
16 ownership in the United States or any other
17 topic relevant to this case?

18 A. I am not.

19 Q. Are you an expert witness in this
20 case?

21 A. I am not.

22 Q. Are you referring an expert
23 opinion in this case?

24 A. I am not.

25 Q. All right. If you take a look at

1 J. Sears

2 paragraph 20, you will see there is a
3 reference to a survey by a -- a couple of
4 surveys by the National Shooting Sports
5 Foundation Incorporated.

6 Have you seen these surveys?

7 A. At some point in the past, yes.

8 Q. Do you remember when?

9 A. Same thing. I probably saw the
10 graphic when this one came out, probably
11 around the time it came out originally.

12 And then I reviewed it again
13 briefly, you know, after, you know, in the
14 process of putting this together with our
15 team.

16 Q. And do you know what the National
17 Shootings Sports Foundation, Inc. is?

18 A. Loosely. It is a collection of
19 different sporting shooting organizations,
20 and tracks membership data across the various
21 organizations.

22 Q. Have you had any communications
23 with the National Shooting Sports Foundation?

24 A. I have not.

25 Q. Or any of its affiliates?

1 J. Sears

2 A. No.

3 Q. Can I ask you to take a look at
4 and quickly read paragraphs 21 through 23.

5 (Witness is perusing the
6 exhibit.)

7 A. Okay.

8 Q. So what is your understanding of
9 what a machine gun is?

10 A. I would define a machine gun as
11 an automatic fire weapon where you pull the
12 trigger once, and it continues firing until
13 the ammo is spent, or you release the
14 trigger.

15 Q. And how does that differ from the
16 weapon that you are looking to buy?

17 A. The weapon I am looking to buy is
18 a semiautomatic weapon, so if I pull the
19 trigger once, one bullet comes out.

20 Q. Are there devices that would
21 modify the semiautomatic weapon to fire
22 automatically, or at greater speed?

23 A. Not that would be legal for me to
24 own.

25 Q. Are you familiar with a bump

1 J. Sears

2 stock?

3 A. I am.

4 Q. Could you put a bump stock on the
5 rifle that you are intending to buy?

6 A. I could.

7 It still would only fire one
8 bullet, if I press the trigger once.

9 Q. And if you continued pushing the
10 trigger, would it continue to fire?

11 A. It would, and it would remain a
12 semiautomatic gun.

13 Q. So can you explain to me what you
14 mean by that?

15 A. I feel like there is like the
16 misnomer or misbranding of a bump stock, that
17 it turns it into a machine gun.

18 I have seen whoever congress had
19 as their expert witness, and expert testimony
20 on the bump stock from the ATF.

21 Essentially what people think it
22 does, it uses the recoil of the gun bouncing
23 against your shoulder, so that you keep
24 depressing the trigger with the bump of it.

25 You can have bump stock, and

1 J. Sears

2 actually get a good grip on the gun and use
3 it as a semiautomatic weapon. It is still
4 one trigger press and one bullet comes out.
5 It is still a semiautomatic.

6 Q. Okay.

7 A. If you train very quick to have a
8 very quick trigger finger, you can shoot at
9 the same rate of speed.

10 Q. Really the same rate of speed?

11 A. Yeah.

12 Q. Have you ever fired a machine
13 gun?

14 A. I have not.

15 Q. Would you purchase a machine gun,
16 if it was lawful?

17 A. Yes.

18 Q. And what purpose would you use it
19 for?

20 A. Just going to the range.
21 It would be fun to shoot.

22 Q. Would you use it for self
23 defense?

24 A. No.

25 Q. Why not?

1 J. Sears

2 A. It would be overkill for anything
3 that I could anticipate happening to me to
4 need, you know, to defend myself from.

5 Q. Can you explain that to me a
6 little further why would it be overkill?

7 A. I don't think -- the purpose of a
8 machine gun is you have a hoard of people
9 coming at you, or you are looking to lay down
10 suppressive fire in a manner to facilitate
11 either, you know, some type of movement or
12 people in a battlefield.

13 I don't think I need to do either
14 of those in my home.

15 Q. So we discussed earlier in the
16 deposition a situation where ten or more
17 people were attacking, and how you might want
18 to use the MARS gun that you wish to buy for
19 that; is that correct?

20 A. Yes.

21 Q. And are you looking to change
22 your testimony?

23 A. No.

24 Q. So in that situation, would a
25 machine gun be better?

1 J. Sears

2 A. If I lived in a different
3 residence than I do currently.

4 I have a neighbor that I respect,
5 that her unit is positioned behind my door,
6 and I would seek accuracy over volume of fire
7 for home defense situation with respect to
8 her life and her animal through the wall.

9 Q. Can you explain to me -- you are
10 worried that a machine gun would fire through
11 her wall?

12 A. I believe so, 'cause if we are
13 looking at what is in this complaint, most
14 effect machine guns of a higher caliber, so
15 we are going to have higher rates of
16 penetration.

17 And they are not precision
18 weapons, they are volume of fire weapons, and
19 I would value precision over volume of fire
20 in a self defense scenario.

21 Q. Could the MARS rifle that you
22 want to buy also shoot into your neighbor's
23 apartment?

24 A. With proper ammunition and the
25 material my walls are made out of, no.

1 J. Sears

2 Q. So would the machine gun fire a
3 different kind of ammunition than the NATO
4 round that you discussed?

5 A. Yeah. It would likely fire a
6 3-0-8 or 7-6-2.

7 Q. Are there machine guns that fire
8 NATO rounds?

9 A. There are.

10 Q. And the machine gun that you
11 would purchase, if you could, would it be of
12 a different caliber than the MARS weapon?

13 A. Yeah. It would be a 3-0-8.

14 Q. If you could buy a bump stock,
15 would you do so?

16 A. No.

17 Q. Why not?

18 A. It doesn't interest me. I think
19 it is a gimmick.

20 You know, you can train yourself
21 to shoot faster.

22 And I think the inherent design
23 of the bump stock kind of encourages lack of
24 precision for, you know, a perceived gain in
25 speed of fire.

1 J. Sears

2 Q. If you were to prevail in this
3 lawsuit, would people be able to have guns
4 with bump stocks?

5 MR. ROTSKO: Objection, calls for
6 a legal conclusion.

7 Q. You can answer.

8 A. I believe the ATF didn't win
9 their challenge against bump stocks.

10 I believe New Yorkers can buy
11 bump stocks now, unless New York has some
12 rule that I am unaware of.

13 Q. So is that correct?

14 A. I am not sure.

15 Q. The answer to the original
16 question, if you prevail in this lawsuit,
17 would people be able to buy assault weapons
18 with bump stocks -- do you believe the answer
19 to that to be yes?

20 A. I don't see -- could people --
21 people could buy bump stocks now.

22 If we prevail in this lawsuit,
23 people could buy semiautomatic weapons.

24 Could people marry it somehow to
25 make a semiautomatic weapon with a bump

1 J. Sears

2 stock?

3 Sure, if that was their
4 prerogative.

5 Q. And are you familiar with the
6 circumstances of the Las Vegas shooting?

7 A. I am.

8 Are we talking about the country
9 concert?

10 Q. Yes, with iHeart Radio?

11 A. Sure.

12 Q. Can you describe the weapon used
13 there?

14 A. I can't.

15 I am not an expert witness.

16 Q. But was it semiautomatic rifle,
17 modified with a bump stock?

18 A. Allegedly.

19 Q. Do you have any reason to believe
20 that it wasn't?

21 A. Yeah.

22 Q. Why?

23 A. I don't believe the official
24 narrative of that account.

25 And the videos that I have seen,

1 J. Sears

2 I don't believe a bump stock could fire that
3 fast, with a standard 30 or 40 round
4 magazine, for the prolonged periods of time
5 that were reported.

6 Q. And why not?

7 A. Because at some point, there has
8 to be a break in reloading, and the sound
9 signature of the flash signatures indicated
10 to me that it was a fully automatic weapon,
11 and not a bump stock.

12 Q. And when you say the videos that
13 you have seen, what videos are these?

14 A. Videos that circulated of that,
15 and after the time, from people in the crowd
16 that were being fired upon.

17 Q. And where did you see the videos?

18 A. News sources: Your New York
19 Times, Washington Post, New York Post, social
20 media, you know, on the TV.

21 Q. And so why don't you believe the
22 official narrative?

23 MR. ROTSKO: I believe he
24 answered already.

25 Q. I am asking a more general

1 J. Sears

2 question. I am going back through the
3 various parts of answers that you gave.

4 MR. ROTSKO: So you are asking to
5 summarize?

6 MR. THOMPSON: I am asking why he
7 doesn't believe the official narrative
8 of the Las Vegas shooting.

9 MR. ROTSKO: You can answer
10 again.

11 A. I mean, there is no conclusive
12 follow-up or reinvestigation into the guy.

13 I don't believe the guy carried
14 all that stuff up to his hotel room
15 unobserved, and used a bump stock. I just
16 don't think that is how it happened.

17 Q. Do you think the narrative has
18 been falsified?

19 A. Perhaps.

20 I haven't looked into this case
21 in years, since it happened.

22 I remember it being fishy when I
23 did look at it.

24 Q. Do you know why someone would
25 falsify the narrative?

1 J. Sears

2 A. I don't know. The ATF doesn't
3 like a lot of things so, you know, they want
4 to ban bump stocks, because they are scary.

5 I have no idea.

6 Q. Do you think that the ATF
7 falsified the narrative of the Las Vegas
8 shooting?

9 A. I have no idea.

10 I am not that familiar with this
11 case.

12 Q. But you believe somebody did?

13 A. Uh-huh.

14 MR. ROTSKO: Did you get the
15 answer to that last question?

16 THE COURT REPORTER: Yes, I got
17 an uh-huh.

18 MR. THOMPSON: I believe he said
19 somebody did.

20 A. I would retract, take -- you
21 know, if we are using the term narrative, we
22 are not talking about facts. I don't know
23 what the facts are.

24 You know there is a narrative of,
25 you know, an incident that you are talking

1 J. Sears

2 about from years ago that I have no real
3 knowledge.

4 MR. THOMPSON: What just happened
5 strikes me as awfully close to coaching
6 the witness in the middle of a
7 deposition.

8 MR. ROTSKO: Actually, no; I
9 asked if she had gotten his answer.

10 Because he went like this
11 (indicating), and so I wanted to make
12 sure that she got his answer.

13 MR. THOMPSON: We will keep
14 going.

15 I will just say I find that
16 dubious.

17 Q. Let's continue moving down to
18 paragraph 29.

19 Can I ask you to read the
20 paragraph quickly?

21 A. Sure.

22 Q. If you would like.

23 (Witness is perusing the
24 exhibit.)

25 A. Okay.

1 J. Sears

2 Q. Do you see how paragraph 29
3 references a study by Gary Kleck and Mark
4 Gertz?

5 A. Yes.

6 Q. Have you read that study?

7 A. Not the full study.

8 Q. Have you read any part of the
9 study?

10 A. I have probably seen excerpts
11 from it, or things that reference it, yes.

12 Q. And where have you seen those?

13 A. Different articles on the
14 implementation of defensive gun uses.

15 Q. And can you tell me which
16 articles?

17 A. I couldn't, off the top of my
18 head, no.

19 Q. Can you identify any source where
20 you have read those articles?

21 A. Not with any confidence.

22 Just in general, you know,
23 browsing on, you know, gun laws and gun
24 policy.

25 Q. So is it safe to say that your

1 J. Sears

2 knowledge of that study is through those
3 articles?

4 A. Sure.

5 Q. But you can't identify those
6 articles right now?

7 A. I cannot.

8 Q. Have you ever spoken to Mr. Kleck
9 or Mr. Gertz?

10 A. I have not.

11 Q. Have you ever spoken to anyone
12 about these articles?

13 A. I have not.

14 Q. Similarly, can we go to paragraph
15 33? Let me know when you have read it.

16 (Witness is perusing the
17 exhibit.)

18 A. Okay.

19 Q. Do you see a reference to a study
20 by Christopher Kopel?

21 A. Yes.

22 Q. Have you read that study?

23 A. I have not.

24 I might have seen instances
25 referenced, I don't know where. I couldn't

1 J. Sears

2 say what articles.

3 Q. And have you ever spoken to
4 Mr. Kopel?

5 A. I have not.

6 Q. Have you ever spoken with anyone
7 else about Mr. Kopel's study?

8 A. I have not.

9 Q. And can I ask you to take a quick
10 look at paragraphs 35 through 38, and let me
11 know when you are good to go.

12 (Witness is perusing the
13 exhibit.)

14 A. Okay.

15 Q. And so there is a discussion in
16 here about rifles being -- and semiautomatic
17 firearms being commonly possessed and used
18 for lawful purposes.

19 Do you have personal knowledge
20 about the use of semiautomatic rifles of the
21 sort that are prohibited by New York's
22 assault weapons ban?

23 A. Do I know that people hunt with
24 them outside of New York, yeah, or being used
25 for --

1 J. Sears

2 I don't understand the question.

3 Q. Have you conducted any research
4 into how they are used?

5 A. I have not.

6 I have seen posts on forums and
7 different channels of people using these
8 weapons to hunt or target shoot or compete.

9 Q. But outside of these forums --
10 these posts and forums, do you have any
11 personal knowledge about statistical patterns
12 of use of these weapons?

13 A. Statistical patterns, no.

14 Q. Similarly, do you have any
15 personal knowledge about the patterns and
16 types of ways in which they are used, the
17 purposes for which they are used?

18 A. I don't think -- no, I don't.

19 Q. Do you know whether these weapons
20 are in common use in New York?

21 A. The way that they are banned by
22 New York?

23 Q. Yeah. Do you know whether
24 assault weapons, as they are defined in the
25 penal law, are in common use in New York?

1 J. Sears

2 A. Yes, they are.

3 Q. They are?

4 A. Yeah.

5 Q. Can you explain to me why you
6 think so?

7 A. Almost every law enforcement
8 cruiser has an M16 in it, which would violate
9 the Safe Act.

10 Q. Fair point.

11 Do you know if they are in common
12 use by private citizens in New York?

13 A. I wouldn't believe so.

14 I believe, you know, the Safe Act
15 would be a deterrent for that.

16 Q. Do you know whether -- do you
17 know whether firearms that meet the
18 definition of an assault weapon are commonly
19 used in mass shootings?

20 A. I couldn't speak to that level of
21 statistical analysis.

22 Q. Do you know that they have been
23 used in mass shootings?

24 A. Sure.

25 Q. And do you think that a firearm

1 J. Sears

2 that meets those characteristics would be
3 useful to someone seeking to carry out a mass
4 shooting?

5 A. It could be.

6 Q. Why?

7 A. Anything -- you know, anything
8 can used to commit a mass act of violence.

9 Q. Let me ask you a question.

10 Would the MARS rifle of the sort
11 that you have, that you are seeking in this
12 case, be more useful to a mass shooter than
13 the New York compatible rifle that you
14 generally use?

15 A. I think it would be equal, in the
16 hands of someone who is untrained.

17 Q. Are mass shooters always
18 untrained?

19 A. Sometimes.

20 I feel like more often than not,
21 from what I have seen.

22 Q. Would semiautomatic fire be more
23 useful for a mass shooter than, for instance,
24 a bold action rifle?

25 A. I believe it would be more

1 J. Sears

2 beneficial, yes.

3 Q. Would a detachable magazine be
4 more useful for a mass shooter than a fixed
5 magazine or a pinned magazine?

6 A. Sure.

7 Q. Why?

8 A. They can carry more ammunition.
9 You know, if we are assuming that
10 this person who is breaking the law is going
11 to follow the law, you know, I think they
12 would rather have the 10 round -- detachable
13 10 round magazines.

14 Q. Would accessories such as a
15 telescoping stock, muzzle device or a pistol
16 grip, make a weapon more useful for a mass
17 shooter than a gun without those accessories?

18 MR. ROTSKO: Objection. It calls
19 for speculation about what mass shooters
20 would prefer to use.

21 Q. You can answer.

22 A. It could.

23 Q. Can you explain a little further?

24 A. No.

25 I am not a mass shooter. I don't

1 J. Sears

2 know what they would prefer.

3 Q. Are you aware of the
4 circumstances of the mass shooting carried
5 out in Buffalo about a year and a half ago?

6 A. Loosely.

7 Q. What is your understanding of
8 what happened?

9 A. A person wearing body armor
10 obtained a rifle, because he wasn't -- his
11 information wasn't reported that he had
12 mental issues. Should have been reported to
13 the NICS background check system.

14 He was able to go to
15 Pennsylvania.

16 New York hadn't logged his mental
17 illness.

18 He was able to obtain a gun
19 there, and he went and shot up a grocery
20 store.

21 Q. Do you know where he bought his
22 gun?

23 A. I have no idea.

24 I believe, somewhere in
25 Pennsylvania.

1 J. Sears

2 Q. But do you know whether he bought
3 it from a gun store? Do you know whether he
4 bought it legally?

5 A. I believe he bought it legally,
6 because New York failed to report his mental
7 health issues through the system, you know,
8 that is designed to catch things.

9 Q. Do you know whether he modified
10 his gun from the form in which he bought it?

11 A. I do not know.

12 Q. Do you know whether the gun that
13 he used met the definition of an assault
14 weapon?

15 A. I don't know.

16 Q. Let's move to the one last set of
17 documents.

18 If you would you can take that
19 exhibit and give it back to Maria, if you
20 would.

21 MS. MOUNTAIN: I just have a call
22 with a client. I just need a five
23 minute break.

24 If this is not a good time --

25 MR. THOMPSON: I think I probably

1 J. Sears

2 got only about ten minutes left, but we
3 can break, if you want to.

4 MS. MOUNTAIN: I just need to
5 call a client.

6 We can go off the record.

7 (Discussion off the record at
8 4:10 p.m., and whereupon a short recess
9 was taken and testimony resumed at 4:20
10 p.m.)

11 (Whereupon, two documents were
12 marked off the record as Defendant's
13 Exhibits 2 and 3 for identification, as
14 of this date.)

15 Q. Mr. Sears, during the break did
16 you speak to anyone about the substance of
17 your testimony?

18 A. No.

19 Q. Did you look at any documents
20 during the break?

21 A. No.

22 Q. I am going to hand you a document
23 it is marked Exhibit 3, do you see that?

24 A. Yes.

25 Q. And do you recognize this

1 J. Sears

2 document?

3 A. Yes.

4 Q. What is this document?

5 A. Plaintiff's Responses and
6 Objections to Steven G. James' First Set of
7 Interrogatories.

8 Q. If you go to age 15, is that your
9 signature?

10 A. Yes.

11 Q. And did you review this document
12 before signing?

13 A. I did.

14 Q. And do you have any reason to
15 think that this document is not still your
16 answers to these questions?

17 A. No.

18 Q. I would like to direct you to
19 page three and to interrogatory number five.
20 Do you want to read that response quickly?

21 A. Sure.

22 (Witness is perusing the
23 exhibit.)

24 A. Okay.

25 Q. So did you review this response

1 J. Sears

2 before signing the interrogatory or the
3 interrogatories?

4 A. I did.

5 Q. Did you write this list?

6 MR. ROTSKO: Objection, work
7 product.

8 MR. THOMPSON: I think the
9 question of whether he wrote the list is
10 not work product.

11 MR. ROTSKO: No, it is. How the
12 interrogatory responses are compiled,
13 who put together a list that is work
14 product.

15 MR. THOMPSON: He knows what he
16 wrote.

17 MR. ROTSKO: Uh-huh.

18 MR. THOMPSON: I am asking about
19 what he wrote.

20 MR. ROTSKO: I am objecting to
21 the -- I am objecting on the grounds of
22 work product and directing him not to
23 answer.

24 MR. THOMPSON: You are directing
25 him not to answer whether he wrote this

1 J. Sears

2 list?

3 MR. ROTSKO: Yes, correct.

4 MR. THOMPSON: Okay. We will
5 note that for the record.

6 Q. Let's go down each of these
7 documents and I am going to ask you if you
8 have read them.

9 David Kopel, Rational Basis
10 Analysis of Assault Weapon Prohibition, have
11 you read that, sir?

12 A. No.

13 Q. NSSF, 2021, Firearms Retailer
14 Survey?

15 A. Yes.

16 Q. When did you read that?

17 MR. ROTSKO: Asked and answered.
18 You asked about that one earlier.

19 Q. Can you please summarize your
20 answer?

21 A. Probably around the time it was
22 first released in 2021 and again at some
23 point, you know, during preparing this.

24 Q. NSSF, Firearm Production in the
25 United States with Firearm Import and Export

1 J. Sears

2 Data?

3 A. I don't recall.

4 Q. NSSF, Firearm Production in the
5 United States With Firearm Import and Export
6 Data 2023?

7 A. I don't recall.

8 Q. Maybe I can save us some time can
9 I ask you to go down this list and tell me
10 the ones on this list that you have read.

11 A. NSSF 2021 Firearms Retailer
12 Survey Report. NSSF Modern Sporting Rifle
13 Comprehensive Consumer Report. The NSSF
14 Sport Shooting Participation in the U.S. in
15 2020, 2021. Commonly Owned. NSSF Releases
16 Most Recent Firearm Production Figures. The
17 both works here by E. Gregory Wallace. The
18 William English 2021 Firearms Safety Survey.
19 I likely seen the other William English.
20 This Washington Post poll. First-Time Gun
21 Buyers Grow to Nearly Five Million. Pregnant
22 Florida man uses AR-15 to kill home intruder.
23 Santa Monica owner protects his store with
24 guns. The Austin Miller from the Ocala Star
25 Banner. Hannah Leone, gun instructor uses

1 J. Sears

2 AR-15 to stop attacker in Oswego.

3 Homeowner's son shoots and kills three would
4 be burglars. 15 year old son of deputy

5 shoots burglary suspect. Shooting deemed

6 justifiable. The Nancy Loo, man armed with

7 AR-15 stops attack by neighbor in Oswego.

8 The David French, Texas hero article. The

9 Garret Pelican article. And the police

10 report on the Tallahassee homeowner article.

11 Q. Did you read each of the items
12 that you just discussed in their entirety?

13 A. Not all of them. Some of the
14 studies in the lengthier earlier ones I
15 skimmed through.

16 Q. Did you find these documents
17 yourself? I am asking you the question don't
18 look at your counsel.

19 A. I come across several of these
20 prior to this case, yes.

21 Q. Several of these documents refer
22 to AR15's. Do you know whether the AR15's
23 uses in any of these incidents meet the
24 definition of an assault weapon under New
25 York law?

1 J. Sears

2 A. I do not.

3 Q. Did you play any role in drafting
4 any of these documents?

5 A. Publishing these articles?

6 Q. In writing or publishing any of
7 these articles?

8 A. No.

9 Q. Have you communicated with any of
10 the people who wrote or published any of
11 these articles?

12 A. No.

13 Q. Do you have personal knowledge as
14 to the consequence -- as to the contents --
15 the truth of the contents in any of these
16 articles -- let me rephrase that. I stumbled
17 all over myself.

18 Do you have personal knowledge as
19 to the truth of the contents of any of these
20 articles?

21 A. I don't know.

22 Q. Have you spoken to anyone else
23 other than that we have mentioned today about
24 this case?

25 A. Just our legal team.

1 J. Sears

2 Q. And again I am not asking for
3 conversations with your legal team.

4 A. Sure. My wife knows I am here.

5 Q. Gotcha. Have you spoken to
6 anyone not mentioned so far today other than
7 your legal team about assault weapons and the
8 constitutionality of the prohibition on
9 assault weapons?

10 A. No.

11 Q. Have you ever spoken to Mark
12 Smith?

13 A. I don't know who that is.

14 Q. Have you ever e-mailed with Mark
15 Smith?

16 A. I don't know who that is.

17 Q. And lastly what is your
18 understanding of the Second Amendment?

19 A. My right to own guns shall not be
20 infringed and, you know, simple as that. It
21 is a God given right and it is there to tell
22 the government not to infringe upon my
23 rights.

24 Q. So a well regulated militia being
25 necessary to the security of a free state the

1 J. Sears

2 right of the people to keep and bear arms
3 shall not be infringe, is that right?

4 A. Yes. Uh-huh.

5 Q. So let's -- if you don't mind
6 let's break that down a little bit.

7 When we talk about a well
8 regulated militia what is your understanding
9 of that phrase?

10 A. A well trained population.

11 Q. Does it refer to government
12 regulation?

13 A. It does not. That term was not
14 used at the time of that right writing.

15 Q. Is any government regulation of
16 firearms constitutional?

17 A. No.

18 Q. Necessary of the security of the
19 free state, what is your understanding of
20 what is meant by a free statement?

21 A. Tyranny both foreign and
22 domestic. Threats foreign and domestic.

23 Q. Can you explain to me what you
24 mean by threats?

25 A. Self defense if we are talking as

1 J. Sears

2 the framers of the Bill of Rights would have
3 meant it. Tyranny or opposition from a
4 foreign power or in the event that the
5 American government grows tyrannical in the
6 nature of Britain who they were fighting,
7 yeah, at the time when they drafted this
8 after that war.

9 Q. Do you think that the American
10 government is tyrannical?

11 A. The whole federal government, New
12 York State, I don't know.

13 Q. Let's start with the federal
14 government.

15 A. I don't know. In areas.

16 Q. Can you explain to me what areas?

17 A. I might have convoluted my
18 Federal with New York. I don't know I think
19 New York is being tyrannical with --

20 Q. Let's start with the federal
21 government, if you would. We will go down
22 the levels.

23 Do you think the federal
24 government is tyrannical?

25 MR. ROTSKO: Objection. This

1 J. Sears

2 lawsuit is not against the federal
3 firearms regulation.

4 MR. THOMPSON: I object to the
5 speaking objections.

6 Q. Do you believe that the federal
7 government is tyrannical?

8 A. I don't see how it is irrelevant.
9 And my beliefs here on legislature matters I
10 just see how this ties with anything.

11 Q. Okay.

12 A. If we are looking at the Bruen
13 decision and the --

14 Q. But I am asking you the question
15 you are under oath.

16 A. Sure.

17 Q. I would appreciate it if you
18 would answer.

19 A. Sure. No. I think it has the
20 mechanisms with which to be tyrannical. On a
21 day to day basis I don't think we are all
22 sitting here living under tyranny. But, you
23 know, the government has the powers with
24 which to be tyrannical that is how I would
25 frame my answer.

1 J. Sears

2 Q. When you say the powers to be
3 tyrannical or the mechanisms to being
4 tyrannical, what are you referring to?

5 A. The different organizations and
6 bodies that exist at the federal level to
7 imprison people and to enforce laws,
8 executive orders, mandates and so on.

9 Q. Any specific laws or executive
10 orders?

11 A. I mean if we look back at how the
12 government reacted to COVID 19, you know, if
13 we see writing on the wall with how Canada
14 handled freezing out people financially I
15 think our government possesses those equal
16 capabilities.

17 Q. Do you think the federal
18 government's response to COVID 19 was
19 tyrannical?

20 A. Yes.

21 Q. And why?

22 A. I think they closed places of
23 worship. They wouldn't let people go attend
24 churches, synagogues, mosques. Hindering
25 free trade and commerce telling places when

1 J. Sears

2 they would be allowed to open deeming things
3 essential services.

4 Q. Do you think that using firearms
5 to resist the federal government's response
6 to COVID 19 is correct or constitutional?

7 MR. ROTSKO: Objection on
8 relevance.

9 MR. THOMPSON: Relevance is not a
10 deposition objection.

11 MR. ROTSKO: It is. Rule 26B1 of
12 the Federal Rules of Evident limits
13 deposition questions to those that are
14 relevant to claims and defenses in the
15 matter in which we are talking about
16 firearms is appropriate.

17 MR. THOMPSON: I would appreciate
18 it if the witness can answer the
19 question.

20 MR. ROTSKO: I Objected.

21 MR. THOMPSON: Okay. It is on
22 the record.

23 Q. I would appreciate if you would
24 answer the question.

25 A. I don't see how it is relevant.

1 J. Sears

2 Q. Okay. But I would appreciate it
3 if you would answer the question?

4 A. I don't think using firearms
5 would have been inappropriate action to
6 during COVID 19, no, to the government's
7 treatment of.

8 Q. So when is using firearms an
9 appropriate redaction to tyranny?

10 A. Who is to say.

11 Q. Well I am asking your opinion.

12 A. I don't know. It is a, you know,
13 it is a hypothetical scenario we can concoct
14 here like I don't know. It is like a moral
15 and philosophical dilemma.

16 Q. It is. And I mean that is one of
17 the things about this area of the law, you
18 know, it interacts with our morality and our
19 philosophy.

20 A. Sure.

21 Q. And so I guess what I am trying
22 to get at is you have said that the federal
23 government part of -- the point of the Second
24 Amendment among other things to resist
25 tyranny. That the federal government has

1 J. Sears

2 been tyrannical and I guess the question is
3 when should firearms be used to resist
4 tyrannical government in this case?

5 MR. ROTSKO: Can I ask for
6 clarity you mean in this case? I am
7 sorry.

8 MR. THOMPSON: In the case that
9 he has discussed.

10 MR. ROTSKO: Okay.

11 A. I would say in a similar fashion
12 to how self defense is legal, right, when
13 your life that of a, you know, loved one,
14 family member so on if there life is
15 threatened in some way then at that point
16 self defense is warranted.

17 Q. So do you think New York State is
18 tyrannical?

19 A. Yes.

20 Q. In what way?

21 A. In the fact that they are not
22 letting me exercise my Second Amendment
23 right.

24 Q. In terms of assault weapons or in
25 terms of anything else?

1 J. Sears

2 A. In terms of assault weapons. In
3 terms of NFA item such as short barrel
4 shotguns and rifles and suppressors that I
5 can't access.

6 Q. The NFA is a federal piece of
7 legislation; is that correct?

8 A. It is. But New York State
9 outright bans all possession of NFA items.

10 Q. Are there any other ways in which
11 New York State is tyrannical?

12 A. Not that I can think of at this
13 time.

14 Q. Is armed resistance to New York
15 State justified?

16 A. No. At this time, no.

17 Q. What would make it justified?

18 A. I don't know. You know, we are
19 here -- arms are a last resort. We are here
20 trying to do it civilly with words and with
21 the law and the tools we have available.

22 Q. If you were to lose this case
23 would violence be appropriate?

24 A. No.

25 Q. Why not?

1 J. Sears

2 A. Because it is not a life and
3 death matter. It could be one day in the
4 hypothetical world a home invasion I lose my
5 life because I don't have the proper tool.
6 But it is not worth upsetting the balance in
7 society that I live in. That we all live in.

8 Q. Is Westchester County tyrannical?

9 A. In the sense of them prosecuting,
10 you know, me if I were to step outside of the
11 Safe Act laws or rules.

12 Q. In any other sense?

13 A. Not that I can think of at this
14 time.

15 Q. Is armed resistance to
16 Westchester County justified?

17 A. No.

18 Q. Let me ask about the second part
19 of the Second Amendment. The right of the
20 people to keep and bear arms should not be
21 infringed.

22 Who is the people?

23 A. If we are looking at it from the
24 people who drafted it anyone, you know, of a
25 military male age but I would commonly say

1 J. Sears

2 any adult in the U.S.

3 Q. Any adult in the U.S.

4 A. If we want to talk about gun
5 rights and carve out of the Second Amendment
6 absolutely. Like I don't know, you know, if
7 you want to carve out violent criminals like
8 sure. Everyone else I think would fall into
9 the people. People who haven't had their
10 rights taken away due to their own offenses.

11 Q. The mentally ill?

12 A. Are they people who have had
13 their rights taken away through their own
14 hand or form, yeah, I would argue yes so I
15 don't think.

16 Q. Noncitizen?

17 A. I don't think noncitizens are
18 afforded the same rights as the Constitution
19 until they gain citizenship status or some
20 form of immigration, you know, I am not
21 expert in this.

22 Q. People under 18?

23 A. No.

24 Q. And what is your understanding of
25 what keep and bear arms means?

1 J. Sears

2 A. To be able to purchase,
3 construct, maintain, freely exercise with,
4 train with.

5 Q. Does the term keep and bear arms
6 cover any use of a weapon?

7 A. Within the confines of the law it
8 doesn't mean you have a free license to, you
9 know, kill things, people. You still abide
10 by the other laws that exist on the books.

11 Q. But not firearms laws?

12 A. What do you mean by that?

13 Q. Laws prohibiting the possession
14 of certain firearms, laws conditioning the
15 commercial sale of firearms you don't view
16 those as legitimate though; is that correct?

17 A. If we are going under like a pure
18 Second Amendment absolutist like, no. But I
19 think for the sake of society and moving on
20 like we need certain guardrails right I don't
21 think violent felons should have guns, no. I
22 think certain rules are necessary. I don't
23 think every one should just be able to walk
24 in to a Wal-Mart and walk out three minutes
25 later I think there should be some guardrails

1 J. Sears

2 in place.

3 Q. And lastly to your understanding
4 what does it mean to the infringed?

5 A. Limiting, prohibiting, you know,
6 banning the sale, purchase, possession,
7 construction of, you know, denying a certain
8 classification of weapon system from being
9 purchased or sold or manufactured.

10 Q. Is any law that touches on
11 firearms possession an infringement?

12 A. Not all of them. If you are a
13 Second Amendment absolutist they would say
14 yes.

15 Q. I am asking you.

16 A. I wouldn't say so. I think some
17 of them are reasonable.

18 Q. Can I ask you what laws you view
19 as not an infringement?

20 A. I think that 18 year old rule is
21 valid. I think, you know, that is kind of
22 one of those milestones we set in our society
23 for certain things. I don't think we need
24 people younger than that having these weapons
25 at that age. That is fine.

1 J. Sears

2 Q. Did you think licensing laws are
3 an infringement?

4 A. Yes.

5 Q. Any licensing laws?

6 A. Yes.

7 Q. Do you think sensitive places
8 laws are infringement?

9 A. Yes.

10 Q. Any sensitive places laws?

11 A. Yes.

12 Q. Do you think background checks
13 are an infringement?

14 A. Would I argue yes but I can see
15 the need for them.

16 Q. Do you think waiting periods are
17 an infringement?

18 A. Yes.

19 Q. Is there anything in your
20 testimony that you can think of right now
21 that you want to go back and change?

22 A. I don't think so.

23 MR. THOMPSON: Let's take a quick
24 two minute break.

25 (Whereupon, a short recess was

1 J. Sears

2 taken at 4:40 p.m. and testimony resumed
3 at 4:41 p.m.)

4 MR. THOMPSON: So no further
5 questions for me on behalf of the
6 superintendent. I will pass the baton
7 along to Westchester County.

8 EXAMINATION BY

9 MS. MOUNTAIN:

10 Q. Good afternoon. I will not be
11 very long. My name is Francesca Mountain. I
12 represent Miriame Rocah in her official
13 capacity as the District Attorney of
14 Westchester County.

15 So you are wanting to purchase
16 this LMT MARS it is called a MARS?

17 A. Sure.

18 Q. And that is an A-15 variant,
19 correct?

20 A. AR-15.

21 Q. I am sorry, I don't even know
22 what I said.

23 A. It's been a long day.

24 Q. AR-15 variant.

25 We spoke a little or actually you

1 J. Sears

2 spoke a little earlier about the origin of
3 the use of -- the intended use by the
4 manufacturer and designer of AR-15 type
5 firearms, correct?

6 A. Sure.

7 Q. Were they originally developed
8 for military use?

9 A. Yes. The AR-15 is the civilian
10 version of the M-16 which was developed for
11 military use.

12 Q. But AR-15 the timing of it it was
13 post like World War II, right, it was around
14 that time for military use, correct?

15 A. Yup.

16 Q. Are you aware of any AR-15
17 variant used for home defense?

18 A. Do I know people who use them for
19 home defense?

20 Q. Do you know specific instances
21 where an AR-15 I will say variant --

22 A. Sure.

23 Q. -- has been used for home defense
24 and I mean not necessarily the trigger has
25 been pulled but has been either trigger has

1 J. Sears

2 been pulled or has just been used?

3 A. To dissuade the situation?

4 Q. Correct?

5 A. Sure. I mean the articles we
6 listed in I think it was the interrogatory
7 response I know those, you know, were cases
8 that were used.

9 Q. There are specific instances in
10 those articles cited in the interrogatories
11 where AR15's have been used for self defense?

12 A. Yeah. I believe I whatever that
13 list we just went through a few minutes ago
14 had instances.

15 Q. If I read all of those I would
16 find --

17 A. Yes.

18 Q. Are you aware of instances where
19 an AR-15 that has been used to protect
20 families the same type of question?

21 A. Same question same kind of answer
22 in those articles.

23 Q. Okay. Are you aware of AR-15
24 variant used in mass shootings?

25 A. Yes.

1 J. Sears

2 Q. You are?

3 A. Yes. There were some articles in
4 that list as well.

5 Q. Same list?

6 A. Yes.

7 Q. Would you agree that an AR-15
8 weapon used in a mass shooting is dangerous?

9 A. Yeah. I would agree any weapon
10 used in a mass casualty event is dangerous.

11 MS. MOUNTAIN: I don't have
12 anything further for you right now.

13 I just need a minute to look
14 through some stuff.

15 I don't have anything else. I
16 don't have anything further.

17 (Time noted: 4:42 p.m.)
18

19 -----
JAMES TIPPER SEARS

20
Subscribed and sworn to before me this
21

----- day of -----, 2024.
22

-----, Notary
23 Public.
24
25

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CERTIFICATE

I, MARIA ACOCELLA, a Notary Public within
and for the State of New York, do hereby
certify:

That the witness whose deposition is
hereinbefore set forth, was duly sworn by me
and that the within transcript is a true
record of the testimony given by such
witness.

I further certify that I am not related to
any of the parties to this action by blood
or marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 8th day of May, 2024.



MARIA ACOCELLA

1

2

WITNESS'S CORRECTION SHEET

3

PAGE \ LINE \ CORRECTION

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JAMES TIPPER SEARS

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Subscribed and sworn to before me

24

this _____ day of _____, 2024

25

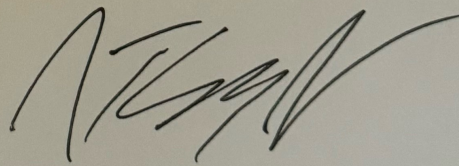
_____, Notary Public.

WITNESS'S CORRECTION SHEET

(for deposition taken May 1, 2024)

PAGE \ LINE \ CORRECTION

28:16-17 "a nonresident New York license" should be "a nonresident **Utah** license"
49:14 "Louis" should be "**Lewis**"
50:23 "Louis" should be "**Lewis**"
55:8-9 "length of pole" should be "length of **pull**"
64:13-14 "length of the pole" should be "length of the **pull**"
64:18 "length of the pole" should be "length of the **pull**"
65:22 "self defense competition" should be "self defense **situation**"
69:6 "So ii becomes" should be "So **it** becomes"
71:21-22 "you know, Evian side" should be "you know, **other** side"
77:13-14 "get this gun, I could" should be "get this gun, **and** I could"
86:4-5 "bedside safer" should be "bedside **safe**"
134:5 "would have been inappropriate action" should be "would have been **an appropriate** action"



James Tipper Sears

Subscribed and sworn to before me

this 15th day of May, 2024

Alexa Kathryn Sears, Notary Public.



[& - able]

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[answer - atf]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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